

1 UNITED STATES DISTRICT COURT  
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WESTERN DISTRICT OF NEW YORK

4 - - - - - X  
MOOG INC., ) 22-CV-187  
Plaintiff )  
5 vs.  
6 SKYRYSE, INC., et al ) Buffalo, New York  
Defendant. ) October 20, 2022  
7 - - - - - X  
3:00 p.m.

**ORAL ARGUMENT**

**Proceeding held via Zoom for Government Platform  
All parties appeared remotely.**

9  
10 TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE JEREMIAH J. MCCARTHY  
11 UNITED STATES MAGISTRATE JUDGE

12 FOR PLAINTIFF: SHEPPHARD MULLIN RICHTER & HAMPTON, LLP  
13 BY: RENA ANDOH, ESQ.  
LAI YIP, ESQ.  
KAZIM A. NAQVI, ESQ.  
14 -and-  
HODGSON RUSS, LLP  
15 BY: ROBERT J. FLUSKEY, JR, ESQ.  
PAULINE MUTO, ESQ.

16 FOR DEFENDANT: LATHAM & WATKINS, LLP  
17 BY: GABRIEL S. GROSS, ESQ.  
RYAN T. BANKS, ESQ.  
ARMAN ZAHOOORY, ESQ.

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19 FOR DEFENDANT  
20 PILKINGTON/KIM: WINGET, SPADAFORA & SCHWARTZBERG, LLP  
21 BY: ALEXANDER ASHER TRUITT, ESQ.  
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2 \* P R O C E E D I N G

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5 MAGISTRATE JUDGE MCCARTHY: Good afternoon,

17:39:05 6 everyone. I see we have a lighter crowd than usual.

17:39:09 7 People losing interest or what? Okay.

17:39:13 8 Eric, you want to call the case and take  
17:39:15 9 attendance.

17:39:16 10 THE CLERK: Yes, Judge. We're on the record  
17:39:18 11 in civil proceeding 22-CV-187. Moog Inc. v Skyryse  
17:39:26 12 Inc., et al., for oral argument.

17:39:28 13 Present by video are Rena Andoh, Kazim  
17:39:34 14 Noqvi, Lai Yip, Pauline Muto and Robert Fluskey for  
17:39:37 15 Plaintiff; Gabriel Gross, Ryan Banks, Arman Zahoory and  
17:39:45 16 Terrance Flynn for Defendant Skyryse; Alexander Truitt  
17:39:48 17 and Anthony Green for the individual Defendants.

17:39:51 18 The Honorable Jeremiah J. McCarthy  
17:39:55 19 presiding.

17:39:56 20 MAGISTRATE JUDGE MCCARTHY: Good afternoon,  
17:39:57 21 everyone. It's good to see you. It's been too long.  
17:40:01 22 In any event, as you know, today we have on the docket  
17:40:07 23 Moog's motions. Its motion to compel discovery  
17:40:12 24 necessary for further trade secret identification, that  
17:40:16 25 is docket No. 210; and its motion to enter a source code

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17:40:20 2 protocol, which is docket number 213. And I recognize  
17:40:24 3 that there are other motions outstanding, but these are  
17:40:27 4 the two that we will be addressing today.

17:40:33 5 And, I thank you, Rena Andoh, I go your  
17:42:23 6 letter yesterday, which really made my day, in terms of  
17:42:25 7 narrowing some of the issues on motion 210. I also  
17:42:29 8 received Gabe Gross' e-mail of yesterday as well.

17:42:37 9 Is Gabe with us?

17:42:38 10 Oh, yeah, there he is.

17:42:42 11 MR. GROSS: Hello, your Honor, I am.

17:42:44 12 MAGISTRATE JUDGE MCCARTHY: I see you now.

17:42:45 13 Let's just begin -- well, let me say a  
17:42:48 14 couple of things preliminarily. You know, Judge  
17:42:57 15 Vilardo, as you know, has ruled on the privilege issue.  
17:43:00 16 He is commencing a jury trial. Is it next week?  
17:43:07 17 Tomorrow. He is commencing a jury trial tomorrow on a  
17:43:11 18 drug case that may last a while. I don't know, I have  
17:43:17 19 not spoken to him recently about this case, and I don't  
17:43:20 20 know what his time table is for deciding the  
17:43:27 21 jurisdictional and venue motions.

17:43:30 22 As you know, I've decided that, from my  
17:43:35 23 standpoint, the case should remain in this court, at  
17:43:39 24 least through the conclusion of the preliminary  
17:43:42 25 injunction hearing. I understand that's been objected

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17:43:47 2 to, but, so as far as I'm concerned, it's staying here.  
17:43:52 3 If it turns out that he takes a different view, I still  
17:43:56 4 think what we're still doing today and will be doing in  
17:43:59 5 deciding the other motions will not be a wasted effort,  
17:44:03 6 even if the case goes to California. But, my overall  
17:44:08 7 view, and, in particular, because we've -- we've had  
17:44:14 8 these motions on hold for a while, is that I -- I want  
17:44:19 9 to really move toward the identification stage, the  
17:44:30 10 identification of trade secrets at issue in this case.  
17:44:35 11 Not every one of Moog's trade secrets under the sun, but  
17:44:39 12 only what is going to be at issue for purposes of the  
17:44:42 13 preliminary injunction motion. You know, I made my  
17:44:45 14 ruling back in July on that issue, I think it's docket  
17:44:49 15 205. Nobody has objected to that. So, you know, as far  
17:44:57 16 as I'm concerned, I understand the Defendant's position  
17:45:00 17 that they want Moog to identify its trade secrets, but  
17:45:04 18 my ruling has been and continues to be, that before it's  
17:45:07 19 required to do so, it needs the discovery necessary from  
17:45:12 20 Defendants necessary to enable it to do so.

17:45:15 21 So, with that in mind, that is the way we're  
17:45:18 22 going to proceed. So, why don't we just, unless anybody  
17:45:23 23 has a suggestion to the contrary, I would like to just  
17:45:27 24 dive into motion 210, the motion to compel, and, in  
17:45:34 25 particular, the three areas of dispute, which were

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17:45:37 2 identified in Rena Andoh's letter of yesterday.

17:45:43 3 Rena, are you going to be arguing for Moog  
17:45:46 4 or who is going to be arguing?

17:45:47 5 MS. ANDOH: Your Honor, as much as I know  
17:45:49 6 you miss my voice, I will not be arguing this motion.  
17:45:52 7 I'll be turning it over to my colleague, Mr. Naqvi, to  
17:45:56 8 argue.

17:45:56 9 MAGISTRATE JUDGE MCCARTHY: Okay. And I'm  
17:45:57 10 crushed, but I will try to deal with it. All right.

17:46:03 11 Kazim, you have the floor. And, yes, so  
17:46:06 12 let's just focus on the item number one of that letter,  
17:46:10 13 the laptops, the nine laptops, et cetera.

17:46:19 14 MR. NAQVI: Thank you, your Honor. I think  
17:46:21 15 it's first important to note that the nine laptops and  
17:46:24 16 the USB device that are at issue, these were first  
17:46:27 17 addressed by Skyryse, and raised by Skyryse, in its own  
17:46:32 18 May 4 letter. This is not something Moog pulled out of  
17:46:39 19 thin air. And Moog wouldn't even know about these  
17:46:42 20 devices if it wasn't for the statements in Skyryse's May  
17:46:50 21 4th letter. And the May 4th letter describes how, in  
17:46:52 22 connection with Skyryse's own investigation into the  
17:46:55 23 possession and transfer of Moog data, Skyryse discovered  
17:46:59 24 "It appears that Moog information may have been accessed  
17:47:46 25 on Skyryse-issued laptops via personal USB devices held

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17:47:52 2 by Robert Pilkington or Misook Kim." And the letter  
17:48:35 3 then lists on a table on page seven a number of Skyryse  
17:49:08 4 computers that had been connected to the very USB  
17:49:11 5 devices belonging to the individual Defendants that  
17:49:14 6 Skyryse have identified in that same letter.

17:51:12 7 So, you know, as your Honor noted earlier,  
17:51:14 8 the Court's trade secret identification order states  
17:51:17 9 that, before making its identification, Moog must first  
17:51:21 10 examine the information, which was admittedly taken by  
17:51:24 11 its former employees Kim and Pilkington prior to their  
17:51:28 12 departure. So, the Skyryse computers that were  
17:51:31 13 connected to Kim and Pilkington's USB devices are  
17:51:35 14 relevant to the possession, the transfer or the use of  
17:51:38 15 Moog data. And Moog needs to investigate these  
17:51:41 16 computers or images of these computers to understand  
17:51:44 17 what files were transmitted, altered and/or used by  
17:51:47 18 Skyryse employees. We know that Kim and Pilkington used  
17:51:52 19 various USB devices to copy and delete Moog data. And  
17:51:57 20 these Skyryse computers are relevant to Moog's  
17:51:59 21 identification process for its trade secrets.

17:52:02 22 So, in response to our motion, as it has  
17:52:05 23 done previously, Skyryse did produce certain information  
17:52:09 24 after refusing to do so for several weeks, but, and, as  
17:52:12 25 noted in our letter, there still remain outstanding

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17:52:15 2 issues. There is the nine laptops and there is the USB  
17:52:19 3 device that is number 55D28D65.

17:52:24 4 Let me first address the nine laptops.

17:52:27 5 First, I think it's important to note there is no  
17:52:29 6 additional burden involved in this request. Skyryse,  
17:52:33 7 admittedly, has already imaged the nine laptops. All it  
17:52:42 8 needs to do is send the images to iDS. So, there is no  
17:52:53 9 additional burden that we're imposing on Skyryse,  
17:53:00 10 because the process is already in place. Now, Skyryse  
17:53:03 11 may complain about the burdens involved with the  
17:53:06 12 privilege review. But, the burdens involved with the  
17:53:09 13 privilege review should not be a basis to hold up lawful  
17:53:13 14 and relevant discovery. A privilege review can be done  
17:53:19 15 by running select search terms for certain lawyers or  
17:53:27 16 legal terms. Skyryse does not need to review every  
17:53:31 17 single document. And, as your Honor can well  
17:53:33 18 appreciate, there have been large voluminous volumes of  
17:54:02 19 privilege review on both sides of this case. So, I  
17:54:05 20 don't think that can be a basis to hold up discovery.

17:54:07 21 In response to our motion, Skyryse did agree  
17:54:11 22 to produce a connection and file listing for two of the  
17:54:14 23 nine laptops. But, that is insufficient. First of all,  
17:54:18 24 this information should have been provided for the other  
17:54:22 25 seven laptops at minimum. But, the notion that Moog is

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17:54:25 2 only entitled to file listings or connection histories,  
17:54:28 3 but not the devices themselves, is improper. And we've  
17:54:32 4 heard this argument before. We heard this same argument  
17:54:35 5 in connection with Skyryse's motion to compel the trade  
17:55:01 6 secret identification. They claim that because Moog had  
17:55:04 7 the file names for the almost 137,000 files that Ms. Kim  
17:55:51 8 copied, Moog doesn't need to access the devices  
17:55:54 9 themselves. But, as your Honor noted, Moog does have  
17:55:58 10 good cause to first inspect the devices because we need  
17:56:01 11 to understand exactly what was taken, what may have been  
17:56:04 12 altered in those files, who it was sent to, and  
17:56:07 13 especially in this case where there has been admitted  
17:56:10 14 deletion of files, the only way we can truly investigate  
17:56:13 15 what happened is to do a forensic analysis. Simply  
17:56:20 16 getting the file names is insufficient. Same thing  
17:56:25 17 applies here. We must get file names as to each of  
17:56:30 18 these nine laptops. We must understand what Moog data  
17:56:34 19 was transferred to those laptops, how it was used and  
17:56:37 20 how it was altered. So, that is the nine laptops.

17:56:40 21 And then there is the lone USB device,  
17:58:56 22 55D28D65. Skyryse said in its opposition it doesn't  
17:59:04 23 need to provide this device because it was apparently  
17:59:07 24 only used by Skyryse's IT department to set up computers  
17:59:14 25 at Skyryse. Even though its May 4th letter suggests the

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17:59:19 2 opposite, and this was a USB device used by the  
17:59:22 3 individual Defendants. But critically nowhere does  
17:59:25 4 Skyryse ever represent that the device does not contain  
17:59:31 5 Moog data. And if there are no relevant files on the  
18:00:42 6 device, which seems unlikely, given the statements they  
18:00:46 7 made in the May 4 letter, then there is really no  
18:00:50 8 prejudice to Skyryse. But, Skyryse, notably, has been  
18:00:55 9 silent as to the actual contents on the device. And six  
18:00:57 10 of the nine laptops in the May 4th letter were connected  
18:01:01 11 to the device. So, again, these laptops and devices,  
18:01:04 12 they have been placed at issue by Skyryse in connection  
18:01:07 13 with its investigation of Moog data. These are not  
18:01:10 14 devices that have been placed at issue by Moog. And,  
18:01:14 15 so, Moog has met its burden that these devices are  
18:01:17 16 relevant to the claims and defenses in the case. And  
18:01:20 17 more specifically, directly relevant to Moog's trade  
18:01:25 18 secret identification obligation. If these devices were  
18:01:27 19 not relevant, they would not have been discussed at  
18:01:30 20 length by Skyryse in its own letter. So, your Honor,  
18:01:33 21 what we're requesting is that Skyryse transmit images of  
18:03:21 22 the nine laptops at issue over to iDS, again, the images  
18:03:25 23 have already been prepared, and that Skyryse, also,  
18:03:31 24 transmit an image of the USB device, 55D28D65, or the  
18:03:38 25 actual USB device itself over to iDS. They can conduct

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18:03:44 2 a privilege review before the contents are made  
18:03:47 3 available to Moog itself, and then we can do our  
18:03:51 4 forensic analysis as we've done with all of the other  
18:03:54 5 devices in the case.

18:03:55 6 MAGISTRATE JUDGE MCCARTHY: Okay. Thank  
18:03:57 7 you.

18:03:59 8 Gabe, are you arguing in opposition or who  
18:04:02 9 is going to argue?

18:04:02 10 MR. GROSS: I will, your Honor. Thank you.  
18:04:04 11 I do have my colleagues, Mr. Zahoory and Mr. Banks with  
18:04:09 12 me today because they have dug very deep into some of  
18:04:13 13 these issues, which are factually complex. So I may  
18:04:17 14 defer to them, but I'll handle the bulk of the  
18:04:20 15 opposition.

18:04:21 16 And this is an issue that I'm happy to  
18:04:23 17 explain, because I think the way it's been presented by  
18:04:25 18 the Plaintiff is overly simplified, and, frankly,  
18:04:29 19 inaccurate. And I would like to walk the Court through  
18:04:34 20 it in some detail.

18:05:22 21 Your Honor, I'll take my guidance from you.  
18:05:25 22 There are some intricate facts at issue. I did prepare  
18:05:29 23 a few visuals that I'm happy to share a screen and show  
18:05:32 24 and lodge with the Court, if you would like, as a record  
18:05:35 25 of the hearing. I'm happy to proceed with or without

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18:05:37 2 them. I think they may be useful, but I'll take my  
18:05:41 3 guidance from you.

18:05:41 4 MAGISTRATE JUDGE McCARTHY: Well, yeah, if  
18:05:44 5 you want to put them up, we can -- how are we going to  
18:05:48 6 make them part of the record then, I guess, is my  
18:05:51 7 question?

18:05:52 8 MR. GROSS: I'm happy to e-mail them to  
18:05:55 9 everybody, and I can file them with the Court after the  
18:05:57 10 hearing, if you would like.

18:05:58 11 MAGISTRATE JUDGE McCARTHY: Has Moog seen  
18:06:00 12 these before now?

18:06:01 13 MR. GROSS: No, I just prepared these  
18:06:02 14 getting ready last night and today. No one has had a  
18:06:06 15 chance to see them.

18:06:06 16 MAGISTRATE JUDGE McCARTHY: I assume you're  
18:06:07 17 basing them on matters that are already in the record,  
18:06:11 18 correct?

18:06:11 19 MR. GROSS: Just about everything. I have a  
18:06:13 20 couple of facts in the deck that I'm looking at that are  
18:06:16 21 not in the briefing, and I can proceed however you would  
18:06:23 22 like.

18:06:23 23 MS. ANDOH: Your Honor, I have a little bit  
18:06:25 24 of concern about this because we've never seen anything  
18:06:27 25 that he is about to put up on the screen, and it's

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18:06:30 2 difficult for us to review it in real time and figure  
18:06:33 3 out if what's there is consistent with our understanding  
18:06:36 4 of the record and what has actually been disclosed.  
18:06:39 5 Obviously, it's your Honor's decision with respect to  
18:06:41 6 that. I certainly suggest that if he is going to be  
18:06:46 7 allowed to do it, that we be given a period after the  
18:06:49 8 hearing to lodge any complaints or issues with we have  
18:06:54 9 with the demonstratives.

18:06:57 10 MR. GROSS: Your Honor, I can make it easy,  
18:06:59 11 I can only show the slides with things that are in the  
18:07:02 12 record already, and there is a couple that have other  
18:07:06 13 things, and I'm happy to keep them off the screen if  
18:07:09 14 that will moot Ms. Andoh's concern.

18:07:12 15 MAGISTRATE JUDGE McCARTHY: Let's do it this  
18:07:14 16 way. If those slides which are not totally based on the  
18:07:17 17 record are really helpful and are not going to be  
18:07:20 18 objected to, then good for you. And it may be helpful,  
18:07:24 19 so I'm not going to decide whether they will be part of  
18:07:27 20 the record. And if I do allow them as a basis for my  
18:07:32 21 consideration, then, if Moog requests, I'll give it an  
18:07:36 22 opportunity to respond to that. But, let me just say in  
18:07:39 23 general, folks, that, obviously, we got to move this  
18:07:46 24 case forward. There have been some delays here and  
18:07:50 25 there are due to disputes, which are nobody's fault, but

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18:07:53 2 it does take some time, and I want to move things as  
18:07:58 3 quickly as I can. So, I'm not going to be giving you a  
18:08:05 4 detailed written explanation of things, I will explain  
18:08:09 5 my reasoning on the record, and we'll move on from  
18:08:14 6 there.

18:08:14 7 But, so, with that Gabe, why don't you begin  
18:08:18 8 your presentation and making use of whatever slides you  
18:08:25 9 wish. And, as we go along, if Moog has a particular  
18:08:28 10 issue with one slide, they can speak up or ask for more  
18:08:33 11 time to address it, et cetera. Okay?

18:08:36 12 MR. GROSS: Okay. Thank you, your Honor.  
18:08:37 13 I'll be judicious about it and stick to things that I  
18:08:41 14 don't think are very controversial and mostly relate to  
18:08:44 15 the record in this case.

18:08:45 16 MAGISTRATE JUDGE McCARTHY: Okay.

18:08:45 17 MR. GROSS: One thing that I think would be  
18:08:47 18 helpful to do to start this discussion is talk about the  
18:08:51 19 data and information that is at issue into discovery in  
18:08:55 20 this case, because we are going to get into a discussion  
18:09:00 21 of proportionality and of burden, and that has to do  
18:09:05 22 with the volume of information that is at issue in the  
18:09:08 23 discovery and the discovery that has been requested. So  
18:09:10 24 just in terms of vocabulary, I would like to just step  
18:09:13 25 back and talk about the amount of data we're talking

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18:09:16 2 about. We're talking about not just gigabytes of data,  
18:09:21 3 but terabytes of data. And, for me, when I think about  
18:09:23 4 those volumes, it takes me back to when I used to do  
18:09:27 5 physical page turns of discovery information that would  
18:09:30 6 show up in my office in banker's boxes, each of which  
18:09:34 7 held about 2500 pages or 3000 pages in the box, and they  
18:09:38 8 would stack up in the corner for me. So, to put this in  
18:09:42 9 perspective, your Honor, we're talking about multiple  
18:09:45 10 terabytes of data, and I'll explain that as to how it  
18:09:48 11 applies to the actual discovery in this case. But, a  
18:09:51 12 single terabyte, a single terabyte of data, is roughly  
18:09:56 13 equivalent to 75 million pages of text if it were  
18:10:00 14 printed out. A gigabyte is 1,000th of that. A gigabyte  
18:10:06 15 is about 75,000 pages of text worth of data. That is  
18:10:11 16 what we're talking about. A single gigabyte would fill  
18:10:14 17 about 30 bankers boxes of paper. That would fill up a  
18:10:18 18 truck, your Honor. And a terabyte would be a 1,000 of  
18:10:23 19 those trucks. Just to put some perspective on the  
18:10:26 20 volumes we're going to be referring to.

18:10:28 21 I think it's also useful to think about and  
18:10:31 22 to be conscious of the discovery that is already  
18:10:34 23 available to Moog today, and has been for months through  
18:10:37 24 the processes that the parties have stipulated to and  
18:10:40 25 through the information that has been exchanged. Moog

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18:10:43 2 already has, and this is just from Skyryse alone, this  
18:10:46 3 is not from the individual Defendants, Moog has nearly  
18:10:50 4 two terabytes of data available to it in discovery from  
18:10:53 5 Skyryse right now. Using those rough equivalents to  
18:10:57 6 pages, that is about 150 million pages worth of data  
18:11:01 7 that is already available in discovery. And it's in  
18:11:04 8 multiple forms. It came from four laptops that Skyryse  
18:11:08 9 turned over to iDS in their entirety pursuant to the  
18:11:12 10 stipulation; two USB storage devices in their entirety;  
18:11:17 11 there are two source code repositories, excuse me, that  
18:11:22 12 Skyryse provided to iDS because they had hit on some of  
18:11:26 13 Moog's search terms. And out of an abundance of caution  
18:11:30 14 because they might contain both sides' data, Skyryse  
18:11:33 15 turned it over to iDS. There is many other hit son  
18:11:37 16 search terms. And 50,000 thousand pages of discovery  
18:11:40 17 that Skyryse collected because they were responsive to  
18:11:43 18 discovery. And Skyryse has made other relevant source  
18:12:07 19 for inspection for the last three months now, that we  
18:12:07 20 made available for inspection and they chose not to look  
18:12:12 21 at it. We asked that they provisionally begin some  
18:12:17 22 security restrictions to begin their inspection in  
18:12:20 23 earnest, which they claim they need all of that.  
18:12:22 24 Together, your Honor, is already two terabytes of  
18:12:26 25 information available to Moog today and has been for

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18:12:29 2 months.

18:12:29 3 And today, we're going to talk about the  
18:12:31 4 nine laptops that Mr. Naqvi just addressed. The amount  
18:12:35 5 of data on those laptops, your Honor, is another nearly  
18:12:38 6 three and a half terabytes of data. That would be over  
18:12:42 7 200 million pages worth of data. And if they are going  
18:12:45 8 to be turned over wholesale without a showing of  
18:12:49 9 relevance, without a showing of responsiveness, those  
18:12:53 10 will require Skyryse's legal team to review their  
18:12:56 11 contents for privilege, not quite as simple and quick as  
18:13:00 12 Mr. Naqvi made it sound, that it could be all automated.  
18:13:04 13 We're talking about attorney/client privilege review.

18:13:42 14 We'll turn to the volume shadow copies in  
18:13:45 15 another part of this hearing. That is another 112  
18:13:49 16 gigabytes of data that Moog is demanding, your Honor.  
18:13:52 17 That would be roughly 8 million pages worth. Let's talk  
18:13:56 18 about Ms. Kim's and Mr. Pilkington's devices. Those  
18:14:00 19 alone, the five devices that we'll hear from their  
18:14:03 20 counsel about, those comprise another two terabytes of  
18:14:07 21 data, your Honor, another 150 million pages worth of  
18:14:10 22 data. So, I think, as we go forward, I know one of the  
18:14:14 23 questions the Court will be wrestling with is is there a  
18:14:19 24 showing of relevance for this vast amount of data. The  
18:14:22 25 vast majority of which can't possibly be relevant, even

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18:14:25 2 if there are some relevant documents in them. What  
18:14:30 3 about proportionality? What about the burden on the  
18:14:33 4 Defendants and the benefits of the discovery on top of  
18:14:47 5 the terabytes that the Plaintiff Moog here already has?

18:14:51 6 So, with that, your Honor, I'd like to talk  
18:14:54 7 about these nine devices that Mr. Naqvi just addressed,  
18:14:58 8 because that is a significant volume of data. That is  
18:15:02 9 three and a half, almost three and half terabytes in and  
18:15:06 10 of itself.

18:15:07 11 So, at this point, your Honor, if I may,  
18:15:09 12 I'll try my hand at sharing the visual aid, and I would  
18:15:12 13 like to address that May 4th letter. What I will put on  
18:15:16 14 the screen is the excerpt that Mr. Naqvi just described.  
18:15:20 15 So, this letter is one that Skyryse's prior counsel had  
18:15:27 16 sent as its investigation was underway. Let me stop for  
18:15:32 17 a second, your Honor, and ask if you can see my screen.

18:15:36 18 MAGISTRATE JUDGE MCCARTHY: Yes, I can see  
18:15:37 19 it, and I also have the letter itself in front of me. I  
18:15:40 20 think that was exhibit D to Rena Andoh's declaration.  
18:15:45 21 So, yeah, I have it.

18:15:47 22 MR. GROSS: Correct ECF No. 210-7. So, i  
18:15:51 23 think we're all looking at the same thing. This is  
18:15:54 24 Gibson Dunn's letter as it was going through its  
18:15:57 25 investigation urgently in May. And Mr. Naqvi described

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18:16:01 2 this and characterized it in a way that I'm familiar  
18:16:05 3 with because I've seen it in their briefing several  
18:16:09 4 times. Things like, "Skyryse put it in issue and this  
18:16:11 5 was Skyryse that implicated all of these devices." I  
18:16:15 6 think he had the facts mistaken when he said that  
18:16:19 7 everything shown in this letter shows devices that were  
18:16:22 8 owned by Kim and Pilkington that were connected to  
18:16:26 9 Skyryse devices, which is not the case. I think  
18:16:29 10 throughout this letter, what you'll see is in the letter  
18:16:31 11 is Skyryse's counsel was being very transparent with the  
18:16:34 12 early stage investigation, basically updating Moog and  
18:16:38 13 its counsel about what they were finding as the  
18:16:40 14 investigation was underway and making it very clear.  
18:16:43 15 You'll see it throughout the letter, look, we're  
18:16:45 16 continuing to investigate the issues. This  
18:16:47 17 investigation is ongoing. The answers we're giving you,  
18:16:49 18 at this point, may be subject to change. This isn't  
18:16:54 19 final. This isn't definitive. And I think Moog  
18:16:58 20 information, I think this is part of the quote that Mr.  
18:17:25 21 Naqvi mentioned, Moog information may have been accessed  
18:17:30 22 primarily via personal USB devices held by the  
18:17:35 23 Defendants, Mr. Pilkington and Ms. Kim. May have been  
18:17:38 24 accessed by devices that those people had. And  
18:17:44 25 Skyryse's investigation into the interactions between

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18:18:19 2 its employees and some SanDisk Cruzer, that is a brand  
18:18:23 3 name, SanDisk Cruzer, USB information is ongoing. So  
18:18:28 4 while this investigation was underway, counsel provided  
18:18:31 5 this list. What it did not do, and what Skyryse did not  
18:18:35 6 do, and Skyryse's prior counsel did not do is make an  
18:18:39 7 admission or draw a conclusion that everything in this  
18:18:41 8 letter that reflected the current state of counsel's  
18:18:44 9 investigation was tied to a device owned by Pilkington  
18:18:48 10 or Kim that was involved in misappropriation. There are  
18:18:52 11 no such admissions.

18:18:53 12 And, your Honor, the Court will see  
18:18:56 13 throughout the briefing, what I respectfully submit are  
18:19:00 14 a number of overstatements, even stronger than the terms  
18:19:03 15 in which we heard Mr. Naqvi use today, say that these  
18:19:07 16 are admittedly or necessarily implicated by  
18:19:12 17 misappropriation, used by Ms. Kim and Pilkington and  
18:19:17 18 misappropriation. That is not the case. This  
18:19:19 19 particular chart that contains the nine devices that  
18:19:21 20 Moog has moved to compel, does not, and did not in the  
18:19:43 21 letter, get presented as an admission that every single  
18:19:46 22 device in that chart was involved with Kim with  
18:19:49 23 Pilkington and with any sort of alleged  
18:19:52 24 misappropriation. And let me unpack that for the Court,  
18:19:54 25 please, because I think it's important to look at this

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18:19:56 2 specifically in detail.

18:19:57 3 This next slide is just simply an  
18:19:59 4 enlargement of the chart that was in the May 4th letter.  
18:20:03 5 And I added numbers on the left side. Those are the  
18:20:06 6 nine devices that Moog enumerated in its motion about  
18:20:10 7 the ones that they are compelling or moving to compel to  
18:20:13 8 be produced in their entirety, nine entire computers,  
18:20:17 9 your Honor.

18:20:17 10 MAGISTRATE JUDGE MCCARTHY: Excuse me. You  
18:20:18 11 said something about a next slide, but I'm still seeing  
18:20:21 12 the same slide. Have you switched slides?

18:20:25 13 MR. GROSS: Sure. The slide I would like to  
18:20:28 14 direct the Court's attention has a number 6 on the  
18:20:31 15 bottom right. And if that has not advanced, I will try  
18:20:35 16 to restart it.

18:20:36 17 MAGISTRATE JUDGE MCCARTHY: Maybe if I click  
18:20:38 18 on it, no, nothing happens.

18:20:40 19 MR. GROSS: All right. I'll stop and start  
18:20:42 20 the share again and see if I can get this up to speed.  
18:20:45 21 If not, I'll just continue without the visuals. But,  
18:20:58 22 hopefully, I can bring us up to speed.

18:21:01 23 Thanks for your patience. Is there a slide  
18:21:03 24 number 6, that says: "Moog's motion, nine laptops,"  
18:21:06 25 available to you?

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18:21:07 2 MAGISTRATE JUDGE MCCARTHY: Yes. Now, okay,  
18:21:13 3 you have to all help me here because it's partially  
18:21:19 4 blocked off by the videos of you folks to the right. Is  
18:21:22 5 that what you're seeing?

18:21:24 6 MR. GROSS: That sounds like a personal  
18:21:27 7 setting. I have you in the margins and can see.

18:21:33 8 MAGISTRATE JUDGE MCCARTHY: You're all on  
18:21:34 9 the right-hand margin. I have four of you on the  
18:21:37 10 right-hand margin, but you're overlapping with the  
18:21:40 11 slide. So, I'm trying to figure out how to see the full  
18:21:44 12 slide.

18:21:44 13 MS. ANDOH: Gabe, you have it in -- not in  
18:21:47 14 slideshow mode. I would suggest that if you put it in  
18:21:50 15 slideshow mode, it may actually blow it up so the Judge  
18:21:54 16 can actually see it.

18:21:55 17 MAGISTRATE JUDGE MCCARTHY: As much as I  
18:21:56 18 like seeing your faces, I recognize your voices, so if I  
18:22:01 19 look at the slides right now, that would be helpful.

18:22:03 20 MR. GROSS: I appreciate that. And in, as a  
18:22:05 21 matter of fact, I had it in slideshow mode but it is  
18:22:10 22 obviously not working over the Zoom platform. I'll go  
18:22:14 23 into the presentation mode now. Has that helped anyone?

18:22:18 24 MAGISTRATE JUDGE MCCARTHY: Nope. Let me  
18:22:20 25 see. Nope. Is everybody else, oh.

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18:22:26 2 MR. GROSS: Okay. Well, I think then I'm  
18:22:28 3 probably going to need to cancel the demonstratives or  
18:22:33 4 just actually, I can switch to a better format in one  
18:22:36 5 moment.

18:22:36 6 MAGISTRATE JUDGE MCCARTHY: Well, okay.

18:22:37 7 MR. GROSS: But I can -- what I'll do in a  
18:22:40 8 moment, your Honor, is I'll switch to a sharing a PDF of  
18:22:44 9 the same slide, and I think that will simplify it, but  
18:22:47 10 in the meantime, I can unpack this a little bit.

18:22:50 11 MAGISTRATE JUDGE MCCARTHY: All right.

18:22:51 12 MR. GROSS: Exhibit D, ECF 210-7 of Ms.  
18:22:56 13 Andoh's letter.

18:22:59 14 MAGISTRATE JUDGE MCCARTHY: The May 4th  
18:23:01 15 letter.

18:23:01 16 MR. GROSS: Page seven has the chart on it.  
18:23:03 17 And what I did is I will enumerate the nine devices on  
18:23:07 18 there, and then I can explain their could connections to  
18:23:11 19 these various USB devices and what the subsequent  
18:23:15 20 investigation that continued after the May 4th letter  
18:23:18 21 revealed about it, and how we have, on behalf of  
18:23:20 22 Skyryse, continued to share information about them,  
18:23:23 23 which, frankly, moot the issue. And the information  
18:23:26 24 that we've already turned over in discovery and shared  
18:23:29 25 with Moog, shows that there is simply no basis, no

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18:23:33 2 basis, to demand three and a half terabytes of that data  
18:23:37 3 by turning over the entire contents of computers in  
18:23:41 4 light of the significant information Moog has already  
18:23:45 5 provided. So, all right. I just see my colleague help  
18:23:52 6 me out here.

18:23:52 7 Is the slide available to you now, your  
18:23:55 8 Honor?

18:23:55 9 MAGISTRATE JUDGE McCARTHY: Yeah. I mean  
18:23:56 10 it's, yeah, close enough. I think the only thing that  
18:24:00 11 is blocked is the final column. Yeah. I see it because  
18:24:05 12 I also have the hard copy in front of me. I see it.

18:24:08 13 MR. GROSS: All right. Well, let's  
18:24:09 14 continue. So, you can see where we've enumerated the  
18:24:13 15 different devices on the left. You see 1 through 9  
18:24:16 16 running vertically down the page.

18:24:18 17 MAGISTRATE JUDGE McCARTHY: Wait a second.  
18:24:20 18 Wait. No. I'm sorry. I do see that now, 1 through 9,  
18:24:34 19 I do see that now.

18:24:35 20 MR. GROSS: Thank the Court for your  
18:24:36 21 patience.

18:24:37 22 MAGISTRATE JUDGE McCARTHY: That's okay, but  
18:24:38 23 you're going to be later sending these to everybody,  
18:24:40 24 including me, right?

18:24:41 25 MR. GROSS: Absolutely.

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18:24:42 2 MAGISTRATE JUDGE MCCARTHY: Okay, all right.

18:24:43 3 MR. GROSS: We'll be happy to do that.

18:24:45 4 MAGISTRATE JUDGE MCCARTHY: All right.

18:24:46 5 MR. GROSS: So, what we added to the letter  
18:24:48 6 are those nine numbers.

18:24:49 7 MAGISTRATE JUDGE MCCARTHY: Right.

18:24:50 8 MR. GROSS: To show the devices that are at  
18:24:52 9 issue. And a couple notes of clarification about the  
18:24:55 10 column headings. The one called "host serial" that was  
18:24:59 11 in the Gibson Dunn letter, that we understand is just a  
18:25:04 12 reference to the serial numbers. And the far right  
18:25:08 13 column, the abbreviation VSN.

18:25:11 14 MAGISTRATE JUDGE MCCARTHY: Right.

18:25:11 15 MR. GROSS: I don't know what the acronym  
18:25:13 16 is, but I understand that to mean the serial numbers of  
18:25:17 17 USB devices that may have been connected to the laptops  
18:25:20 18 in the left column. That is what we're looking at here.

18:25:23 19 Let's go to the next slide, please.

18:25:29 20 Now, right off the bat, we can eliminate  
18:25:32 21 some of the laptops on this slide. In particular,  
18:25:35 22 number 9, because it's already been produced. That has  
18:25:40 23 been produced and not at issue. Moog still asks for the  
18:25:42 24 production of nine laptops. The one that is number 9  
18:25:44 25 has been produced, that is no longer at issue. And

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18:25:48 2 there are two more that are not the subject of Moog's  
18:25:51 3 motion, but I wanted to make clear those drop off the  
18:25:56 4 chart as well. There is no discovery dispute about  
18:26:00 5 those. So, the list is getting smaller.

18:26:00 6 Let's go to the next slide, please.

18:26:01 7 And then there is five others, your Honor,  
18:26:03 8 actually more, that I think we can also just do away  
18:26:07 9 with. These are the ones that Mr. Naqvi mentioned as  
18:26:11 10 having been connected to a particular USB device. And  
18:26:15 11 if we use row number 2 as an example, you'll see that  
18:26:20 12 laptop was connected to a device in the right hand  
18:26:22 13 column begins 55D. Do you see that, your Honor? That  
18:26:27 14 row number 2 refers to a laptop connected to a device  
18:26:32 15 that began with 55D. And my colleague just highlighted  
18:26:36 16 that.

18:26:37 17 MAGISTRATE JUDGE McCARTHY: I'm sorry, where  
18:26:38 18 are you highlighting? I'm having a little difficulty  
18:26:41 19 seeing it.

18:26:42 20 MR. GROSS: It's in the right-hand column of  
18:26:45 21 the row that is numbered 2.

18:26:47 22 MAGISTRATE JUDGE McCARTHY: Last  
18:26:47 23 disconnected. How far down are we?

18:26:50 24 MR. GROSS: The far right column, that is  
18:26:52 25 headed "VSN," the header is VSN in the column.

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18:26:56 2 MAGISTRATE JUDGE MCCARTHY: Yes.  
18:26:57 3 MR. GROSS: All right. VSN.  
18:27:00 4 MAGISTRATE JUDGE MCCARTHY: Just a second.  
18:27:01 5 Just, yeah, see that is my problem. Now my courtroom  
18:27:06 6 deputy is here, and see the videos are blocking. Okay.  
18:27:19 7 Guess what, folks. Can you still hear me?  
18:27:22 8 MR. GROSS: Sure can.  
18:27:23 9 MAGISTRATE JUDGE MCCARTHY: I have  
18:27:24 10 eliminated your faces. I don't know --  
18:27:27 11 MR. GROSS: No offense taken.  
18:27:28 12 MAGISTRATE JUDGE MCCARTHY: At some point, I  
18:27:30 13 assume I'll be able to get them back, but now I'm able  
18:27:33 14 to see the entire. How do I get their faces?  
18:27:36 15 THE CLERK: When he stops screen sharing,  
18:27:38 16 they'll come back.  
18:27:39 17 MAGISTRATE JUDGE MCCARTHY: All right. So  
18:27:41 18 when you stop screen sharing, your faces will come back.  
18:27:45 19 See, you are not dealing with a technological Einstein.  
18:27:49 20 I think that is becoming more and more apparent to you.  
18:27:53 21 Anyway, I can see the document now, and I see it in its  
18:28:02 22 entirety.  
18:28:02 23 MR. GROSS: Okay. So, your Honor, what this  
18:28:05 24 part of the presentation is designed to show is that  
18:28:08 25 that particular device that begins with 55D, it's

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18:28:12 2 55D28D65.

18:28:17 3 MAGISTRATE JUDGE MCCARTHY: I see it.

18:28:18 4 MR. GROSS: That was a USB device that  
18:28:20 5 Gibson Dunn had identified as having been connected to  
18:28:24 6 some laptops, and disclosed that to Moog and its  
18:28:27 7 counsel. And we continued the investigation, and here  
18:28:29 8 is what we learned about it. This is not a device owned  
18:28:34 9 by Ms. Kim. It's not a device owned by Mr. Pilkington.  
18:28:38 10 This is a device that Skyryse's IT department used. And  
18:28:42 11 one of the things they used it for was to set up laptops  
18:28:48 12 for employees at the company. And you see it on the  
18:28:53 13 side, the laptop numbered two, numbered 3, 4, 5, 6, 7  
18:28:58 14 and 8. And that make the sense. We interviewed the IT  
18:29:03 15 personnel who are in charge of setting up laptops. We  
18:29:08 16 looked at this USB drive and determined, one, the vast  
18:29:12 17 majority of the data is from '18 and '19, and years  
18:29:39 18 prior to when Pilkington and Kim even joined the  
18:29:42 19 company, and everything that post dated that date, had  
18:29:45 20 nothing to do with Moog. So, Mr. Naqvi made it sound as  
18:29:50 21 though Skyryse will refuse to confirm that this device  
18:29:55 22 has nothing to do with Moog. Your Honor, as an Officer  
18:29:58 23 of the Court, we've said in our briefing, and I'll say  
18:30:00 24 it here again, this device had nothing to do with Moog.  
18:30:04 25 It was the IT department's device used to set up

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18:30:08 2 laptops.

18:30:08 3 So, Gibson Dunn transparently showed this  
18:30:14 4 among the list of USB devices connected to certain  
18:30:20 5 employee's laptops. This is not an admission that this  
18:30:23 6 had anything to do with Moog or that it was Pilkington  
18:30:26 7 or Kim's. So there is no basis for this discovery, your  
18:30:29 8 Honor, because it's simply not relevant.

18:30:31 9 And I heard Mr. Naqvi say something today  
18:30:35 10 and say in the brief, hey, if it's irrelevant, there is  
18:31:17 11 no burden on Skyryse to just turning over these laptops.  
18:31:20 12 That is not how discovery works, your Honor. The  
18:31:22 13 relevance burden in discovery is low, admittedly, but  
18:31:26 14 you still need to have a basis for relevance. And there  
18:31:30 15 is prejudice. There is burden. If Skyryse were ordered  
18:31:33 16 to turn over three and a half terabytes in  
18:31:38 17 indiscriminantly of data on laptops in discovery when  
18:31:42 18 there is no showing of relevance whatsoever, much less  
18:31:46 19 that outweighs the burden or any elements of  
18:31:49 20 proportionality, those are the facts about the USB  
18:31:55 21 55D28D65, it was connected to a number of laptops as  
18:31:58 22 Gibson Dunn showed. The investigation revealed it has  
18:32:02 23 nothing to do with Moog. There is no grounds for  
18:32:04 24 discovery of laptops or that device simply because that  
18:32:08 25 device was connected to a number of laptops. So, that

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18:32:11 2 is what I wanted to say about the USB device, and that  
18:32:14 3 particular USB device, and its connections.

18:32:17 4 So that leaves us with the remaining devices  
18:32:20 5 we see on the slide. Let's go to the next one, please.  
18:32:24 6 Next one, please.

18:32:33 7 MR. ZAHOORY: I put it to the next one, is  
18:32:35 8 it not showing?

18:32:36 9 MR. GROSS: Let's go to the next one.

18:32:48 10 MR. ZAHOORY: Can you guys see it?

18:32:50 11 MR. GROSS: This may be a bill, Arman. What  
18:32:52 12 is on slide 10?

18:32:59 13 Okay. Thank you. All right. Now, bear  
18:33:02 14 with me, your Honor. If I'd been able to build the  
18:33:06 15 slide one piece at a time, this wouldn't be so  
18:33:09 16 overwhelming. I'll walk the Court through it. On the  
18:33:13 17 right hand of the slide, we put red boxes around the  
18:33:18 18 three devices that are at issue, now that we've gotten  
18:33:21 19 rid of the IT drive and the ones that were already  
18:33:23 20 produced. There are three remaining laptops that are at  
18:33:27 21 issue. The one that begins with a serial number FM1,  
18:33:31 22 one that begins with a serial number starting J54, and  
18:33:35 23 one that begins with a serial number C1D.

18:33:39 24 Your Honor, are you able to see those three  
18:33:41 25 red boxes?

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18:33:42 2 MAGISTRATE JUDGE MCCARTHY: Yes, I do.

18:33:43 3 MR. GROSS: Now, we also filled in some  
18:33:45 4 blanks that had been in Gibson Dunn's letter because the  
18:33:48 5 investigation continued. At the point where Gibson left  
18:33:51 6 off with its investigation and knew that the FM1 laptop  
18:33:55 7 had been connected to three drives, but it didn't know  
18:33:58 8 which ones, and so we filled in the blanks because we  
18:34:01 9 continued the investigation with Skyryse and we learned  
18:34:04 10 what they are. So, Moog has been asking for one USB  
18:34:08 11 device, that is in the red text below the chart, that is  
18:34:12 12 the one we just discussed, that is the IT department's  
18:34:14 13 device, that is just irrelevant. There is no reason the  
18:34:18 14 Court should order Skyryse to produce that USB drive  
18:34:22 15 which has nothing to do with Moog or this lawsuit.

18:34:24 16 There are three others that still remain on  
18:34:26 17 this chart, and there is no grounds to compel production  
18:34:30 18 of these, either. The one that begins in EC979, which  
18:34:35 19 shows up in two places on this chart. Arman just  
18:34:39 20 highlighted one and the other connected to two different  
18:34:42 21 laptops that has been produced. So, there is no dispute  
18:34:45 22 about Moog having access to the contents of that laptop.  
18:34:49 23 The second one is the one that begins with the number  
18:34:54 24 80, 80FC319F, that was connected to two other laptops,  
18:34:59 25 and Defendant Kim already produced that, made it

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18:35:03 2 available in discovery. And beyond that, Skyryse has  
18:35:07 3 been, in my view, very reasonable. Skyryse said, look,  
18:35:09 4 if you're interested in how that device that Ms. Kim  
18:35:13 5 produced may have interacted with Skyryse machines, here  
18:35:16 6 are the connection histories. It's a log, if you will,  
18:35:19 7 your Honor, the computers keep that shows when and how  
18:35:24 8 other devices have been connected to them. So, we  
18:35:27 9 provided the connection history that Moog is free to  
18:35:30 10 explore in discovery. But there has been no showing of  
18:35:34 11 any sort that the entire laptops to which that device  
18:35:37 12 was connected with their millions of files on them,  
18:35:42 13 should be produced in discovery. If Moog would like to  
18:35:45 14 meet and confer with us and talk about what they see on  
18:35:48 15 the connection history and follow up with anything  
18:35:50 16 targeted, we'll always be willing to consider that and  
18:35:53 17 meet and confer with them. What they are asking the  
18:35:56 18 Court to do is order more wholesale productions of  
18:35:59 19 entire devices with millions of files on them, the vast  
18:36:03 20 majority of which are just irrelevant.

18:36:05 21 And now the last device, the USB device,  
18:36:08 22 that remains at issue here is one that is called  
18:36:12 23 SanDisk, and again that is the brand name, as we've told  
18:36:16 24 Moog and we have known for some time, that is not  
18:36:19 25 Skyryse's. That belongs to an individual employee.

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18:36:21 2 It's been the subject of third-party discovery, and that  
18:36:24 3 is underway. Skyryse is not in a position to produce  
18:36:27 4 that, and I understand that those -- that this employee  
18:36:30 5 is represented by his own counsel and I understand those  
18:36:32 6 negotiations are underway.

18:36:34 7 MAGISTRATE JUDGE MCCARTHY: So that -- that  
18:36:35 8 employee is -- you're referring to someone -- well, it's  
18:36:41 9 a current employee.

18:36:42 10 MR. GROSS: Current employee, not --

18:36:44 11 MAGISTRATE JUDGE MCCARTHY: Not the  
18:36:45 12 individual Defendants.

18:36:45 13 MR. GROSS: Correct. It's an individual  
18:36:47 14 employee who, and its his personal property, and so Moog  
18:36:52 15 has taken steps to seek third-party discovery from him  
18:36:56 16 and many others.

18:36:56 17 MAGISTRATE JUDGE MCCARTHY: Okay.

18:36:57 18 MR. GROSS: So, your Honor, I think this  
18:37:00 19 brings me just about to a close on the nine laptops and  
18:37:03 20 one USB device issue. Keep in mind what they are asking  
18:37:07 21 for. They are asking for wholesale production of  
18:37:09 22 devices, each of which contains millions of files on it  
18:37:13 23 with no showing of relevance, of the benefit of it, of  
18:37:17 24 the burden, just speculation that they need to go in and  
18:37:20 25 find out what happened. And, your Honor, I know it's a

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18:37:24 2 cliche, but I know I'm going to need to use it more than  
18:37:26 3 once in today's hearing. This is a classic fishing  
18:37:29 4 expedition. There is no reason the Court should order  
18:37:32 5 Skyryse to turn over three and a half terabytes of data,  
18:37:36 6 the hundreds of millions of pages worth of data that  
18:37:38 7 would contain, especially at this stage in a case when  
18:37:43 8 Moog already knows what it's own trade secrets are, is  
18:37:46 9 sitting on a mountain of data that Skyryse has already  
18:37:49 10 provided, and has its own mountain of data identifying  
18:37:53 11 with granularity exactly which files it claims the  
18:37:57 12 individual Defendants took to Skyryse. There is just no  
18:38:01 13 showing for this discovery.

18:38:02 14 So you ordered, your Honor, that Moog should  
18:38:05 15 file a motion to compel what discovery is necessary for  
18:38:09 16 it to identify its own trade secrets. These nine  
18:38:14 17 laptops and this one USB device are not necessary for it  
18:38:17 18 to do that.

18:38:18 19 MAGISTRATE JUDGE MCCARTHY: All right. Let  
18:38:20 20 me, before I turn back to -- have you concluded your  
18:38:24 21 presentation on this issue?

18:38:25 22 MR. GROSS: On the nine laptops, I think  
18:38:27 23 I've said what I needed to say, your Honor.

18:38:30 24 MAGISTRATE JUDGE MCCARTHY: Before I turn  
18:38:31 25 back to Mr. Naqvi, let me ask you, Mr. Gross, aside from

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18:38:39 2 relevance, and I understand your position on that, but  
18:38:42 3 in terms of burden to you, I understand the production  
18:38:48 4 would all be, you know, by computer and so forth, so the  
18:38:52 5 production itself, I don't think would be burdensome.  
18:38:56 6 Do I understand correctly that what you are saying would  
18:38:59 7 be burdensome, if I get past relevance, would be your  
18:39:04 8 need to conduct a privilege review of all of those  
18:39:09 9 devices?

18:39:10 10 MR. GROSS: I think that is a significant  
18:39:13 11 part of the burden, your Honor, but not the only part.

18:39:17 12 MAGISTRATE JUDGE MCCARTHY: What is the  
18:39:18 13 other part?

18:39:18 14 MR. GROSS: Well, the fact that these are  
18:39:20 15 available digitally and by computer does not eliminate  
18:39:24 16 the burden. And I'll give you an example, because of  
18:39:27 17 the expense and the time that it takes to process these  
18:39:30 18 sorts of volumes of data. We have, as I think you know,  
18:39:34 19 we've been working with the individual Defendants to  
18:39:37 20 gain access to five of their devices. And if memory  
18:39:41 21 serves, the combined total volume of data on those  
18:39:45 22 devices is about two terabytes of data, which Skyryse  
18:39:49 23 needs to review for privilege. The laptops contain much  
18:39:52 24 more, about three and a half terabytes of data. And I  
18:39:57 25 mention this to show you by way of comparison, that just

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18:40:00 2 to pay a vendor to upload to produce to the Defendants,  
18:40:06 3 it's taken a week just to upload those files. And we're  
18:40:10 4 talking about a much more significant volume. And once  
18:40:13 5 uploaded, they need to be processed for review. They  
18:40:16 6 need to be accessible on a review platform, so you can  
18:40:20 7 look for privilege issues. And that takes a significant  
18:40:22 8 amount of time and significant amount of expense. And I  
18:40:25 9 think, frankly, that pales in comparison to the number  
18:40:27 10 of attorney hours it will take to do the privilege  
18:40:30 11 review. But I don't want to suggest that just because  
18:40:32 12 the sufficient stuff is digital, there is no burden of  
18:40:37 13 turning them over. Yes, we imagined them, and that was  
18:41:13 14 a significant and expensive process, it doesn't make it  
18:41:16 15 immediately available for discovery. This comes at  
18:41:19 16 great expense, takes a significant amount of time. And  
18:41:21 17 then, your Honor, there is a rule of thumb that our  
18:41:24 18 discovery vendors often use, which is attorneys  
18:41:27 19 reviewing documents for privilege, if they are moving at  
18:41:31 20 a good clip, can review about 50 documents an hour.  
18:41:34 21 It's a very rough rule of thumb, documents have all  
18:41:36 22 different shapes and sizes, but they can do about 50  
18:41:40 23 documents an hour. We're talking about hundreds of  
18:41:42 24 millions of documents. And while we'll use technology  
18:41:45 25 to try to accelerate that process as best we can, it's a

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18:41:48 2 significant undertaking if Skyryse were ordered to  
18:41:55 3 produce this information when there has been no showing  
19:18:16 4 that the vast majority of it is relevant.

19:18:19 5 MAGISTRATE JUDGE MCCARTHY: So, you're  
19:18:19 6 saying not in our lifetimes, is that what you're telling  
19:18:23 7 me?

19:18:23 8 MR. GROSS: Well, you know, I would hope,  
19:18:25 9 your Honor, that technology would speed it along, but it  
19:18:28 10 will take hundreds or thousands of hours at a minimum to  
19:18:31 11 get through the review process, and that is using  
19:18:33 12 technology.

19:18:34 13 MAGISTRATE JUDGE MCCARTHY: All right.  
19:18:35 14 Okay. Thank you.

19:18:36 15 All right. Back to you, excuse me, Kazim.

19:18:42 16 MR. NAQVI: Thank you, your Honor. You  
19:18:43 17 know, Mr. Gross said a lot of things. I'll try to keep  
19:18:47 18 my reply short. The biggest glaring omission from Mr.  
19:18:52 19 Gross' presentation is that you never heard him say that  
19:18:55 20 the laptops we're seeking images to be produced of do  
19:19:44 21 not contain Moog data. That is the biggest unanswered  
19:19:47 22 question. He did not make any representation that the  
19:19:49 23 laptops don't contain Moog data. He made a certain  
19:19:53 24 representation about one of the USB devices, but not the  
19:19:56 25 laptops themselves. And this case is much larger than

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19:19:58 2 USB devices. Once Moog files are entered, they can be  
19:20:04 3 altered, they can be deleted, they can be used, they can  
19:20:11 4 be used as a reference. So laptops are very critical.  
19:20:15 5 And you heard Mr. Gross talk significantly about burden  
19:20:19 6 and the volume of discovery in this case. We need to be  
19:20:22 7 very circumspect about what the root cause of the volume  
19:20:25 8 of discovery of this case is. Moog should not be  
19:20:29 9 penalized because the volume of trade secret theft in  
19:20:33 10 this case is gargantuan. It's 1.4 million files. The  
19:20:38 11 number of devices involved in the misappropriation and  
19:20:40 12 turned over to iDS stipulated by the parties is well  
19:20:44 13 over three dozen. So, you know, we heard Mr. Gross talk  
19:20:48 14 about hard copy pages. And I think your Honor picked up  
19:20:51 15 on it. Data and number of hard copy pages does not  
19:20:54 16 matter if they are producing electronic images. They've  
19:21:33 17 already imaged the devices. That process is done. It  
19:21:36 18 was done months ago. And so there is no further need to  
19:21:39 19 process them. iDS, which is the neutral forensic  
19:21:43 20 vendor, you know, involved in this case, they will  
19:21:46 21 facilitate making that image available for Moog's  
19:21:50 22 review. And, you know, your Honor, Moog is paying 50  
19:21:53 23 percent of iDS's bill. Skyryse is only paying 25  
19:22:00 24 percent. So the notion that Skyryse is going to bear  
19:22:04 25 all of the cost of this process is not true. They are

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19:22:28 2 not required to search for documents, the laptops have  
19:22:33 3 been imagined. They are not required to print  
19:22:35 4 documents. They are not required to prepare bankers  
19:22:37 5 documents. They need to send the images to iDS. I  
19:22:41 6 understand they need to complete a privilege review.  
19:22:43 7 But, your Honor, given the size and scope of this case,  
19:22:48 8 and the volume of trade secrets that have been  
19:23:49 9 misappropriated, a privilege review cannot hold up  
19:23:53 10 lawful discovery. If that was the case, then there  
19:23:56 11 could be no discovery in this case. All parties have  
19:23:59 12 expended critical resources in conducting a privilege  
19:24:04 13 review. That is the nature and scope of the case given  
19:24:07 14 what is at stake here.

19:24:11 15 What I think you heard, I think, is  
19:24:14 16 important the change of tone. I think, I appreciate you  
19:24:16 17 made read the May 4th letter, and I think the May 4th  
19:25:06 18 letter, while it has some ambiguous language about our  
19:25:09 19 investigation is ongoing and things like that, the  
19:25:11 20 devices at issue were clearly implicated in the letter.  
19:25:14 21 We did not write that letter. So, the notion that this  
19:25:16 22 is a fishing expedition, I just think is unfair. This  
19:25:20 23 is Skyryse's letter. And now I understand that  
19:25:22 24 Skyryse's investigation has been ongoing, but there is a  
19:25:26 25 complete change of course here. And Moog needs to be

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19:25:28 2 able to test that change of course. You know, we can't  
19:25:32 3 take Skyryse's word at face value; there is nothing  
19:25:35 4 here, nothing further to be done, no discovery to be  
19:25:39 5 had. There has been a misappropriation of over 1.4  
19:25:43 6 million files by Skyryse's former employees. And, so,  
19:26:18 7 Moog should be entitled to test whether these laptops  
19:26:21 8 contain any Moog data, which there has been no  
19:26:25 9 representation that they don't. And what has happened  
19:26:27 10 to these files, whether they have been altered or  
19:26:30 11 whether they have been deleted or sent somewhere else.

19:26:32 12 And, lastly, we heard Mr. Gross talk about  
19:26:35 13 Skyryse's IT department. I don't think it matters who  
19:26:38 14 connected the devices. What matters is the content of  
19:26:41 15 those devices and the content of those laptops. And we  
19:26:45 16 still have not heard Mr. Gross or any certification that  
19:26:48 17 all of the devices we are seeking production of do not  
19:26:51 18 contain any Moog information. And the fact that that  
19:26:54 19 answer, or that question remains unanswered, I think,  
19:26:57 20 speaks for itself.

19:26:59 21 MR. GROSS: Your Honor, if I may briefly.

19:27:01 22 MAGISTRATE JUDGE McCARTHY: Yeah, yes.

19:27:04 23 MR. GROSS: Moog's speculation is not a  
19:27:06 24 basis for discovery. They have to show relevance. They  
19:27:11 25 are saying, don't trust them, your Honor. They are not

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19:27:14 2 coming to court with evidence of relevance that the IT  
19:27:17 3 department somehow absconded with Moog's proprietary  
19:27:21 4 information. Speculation simply is not a ground for  
19:27:25 5 discovery. They've also, they are shifting their  
19:27:28 6 theory. They came to the Court saying, look what's in  
19:27:31 7 the Gibson Dunn May 4th letter, laptops connected to  
19:27:35 8 certain device. Now, they are saying the investigation  
19:27:38 9 is ongoing and we learned something about the USB  
19:27:41 10 devices, but they are not telling you that the laptops  
19:27:44 11 don't have Moog data on it. Your Honor, that is  
19:27:47 12 speculation that they do. We have no reason to think  
19:27:50 13 that the laptops are laden with Moog data. If they have  
19:27:54 14 specific discovery that is based on fact, that would be  
19:27:58 15 different, but we don't. Now, we keep hearing this  
19:28:37 16 refrain that 1.4 million files have been taken. They  
19:28:46 17 know the factual basis for their allegations of who took  
19:28:49 18 what and when, they have the machines on which those  
19:28:53 19 files were allegedly copied. That does not entitle them  
19:28:56 20 to go into every computer, every drawer, every file  
19:28:59 21 cabinet, every repository in Skyryse simply because they  
19:29:04 22 have a factual basis to accuse wrong doing of certain  
19:29:08 23 individuals. It would be like saying, my home was  
19:29:12 24 burglarized and the burglar took a sack of goods into a  
19:29:16 25 high rise downtown and now I'm entitled to, because the

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19:29:19 2 burglar went in there, to go in every closet, every  
19:29:23 3 drawer, every computer, every repository in that  
19:29:26 4 building because it might be someplace where the burglar  
19:29:30 5 put the ill-gotten goods. That is not how discovery  
19:29:34 6 works. And, frankly, your Honor, when they are sitting  
19:29:37 7 on two terabytes that they already adduced into  
19:29:40 8 discovery without identifying their trade secrets, they  
19:29:44 9 have more than enough.

19:29:46 10 MR. NAQVI: Your Honor, if I may briefly  
19:29:48 11 reply. I'll be 30 seconds.

19:29:50 12 I think Mr. Gross' analogy about the burglar  
19:29:53 13 and goods, it just doesn't apply here. We're dealing  
19:29:56 14 with electronic files and items that are quickly  
19:29:59 15 transferred between computers, so I don't think that  
19:30:02 16 analogy works.

19:30:03 17 And I really just want to end the foundation  
19:30:05 18 of this entire issue. These are devices that Skyryse  
19:30:09 19 identified in its own letter. The notion that Moog is  
19:30:12 20 trying to open every drawer, every computer, every file  
19:30:15 21 at Skyryse is just not true. We do have good cause.  
19:30:19 22 Skyryse provided the good cause as part of its  
19:30:22 23 investigation into what happened to the files taken by  
19:30:25 24 Mr. Pilkington and Ms. Kim. It all starts from the May  
19:30:29 25 4th letter, which is from Skyryse's counsel, and,

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19:30:32 2 unfortunately, Moog has not had visibility into what  
19:30:35 3 happened to the files, where they were transferred once  
19:30:38 4 they were taken. That is part of our investigation that  
19:30:40 5 we are entitled to. And it's the same thing we heard  
19:30:43 6 before, when, oh, Moog, has a file, that is all they  
19:30:48 7 need. And as your Honor noted, that is not all we need.  
19:30:51 8 We need to do a full forensic investigation, it's the  
19:30:55 9 same issue occurring.

19:30:56 10 MAGISTRATE JUDGE McCARTHY: You both -- I  
19:30:59 11 don't mean this to kick the can down the road. You both  
19:31:01 12 make very compelling points. I'm trying to explore  
19:31:08 13 whether there is -- and, again, I want to just say, I  
19:31:14 14 applaud everybody for what is reflected in Rena's letter  
19:31:20 15 of yesterday, that there were a lot of other issues on  
19:31:23 16 the table, and you've made good progress in resolving  
19:31:26 17 them. So, what I'm trying to do now is just explore.  
19:31:31 18 Is there a possibility of, by way of a middle ground, of  
19:31:36 19 maybe doing some random sampling of these various  
19:31:40 20 devices and seeing what you come up with and then  
19:31:44 21 deciding whether further exploration is necessary? That  
19:31:51 22 would minimize the -- I mean, I'm concerned about cost  
19:31:55 23 and I'm concerned about time delay because we want to  
19:31:58 24 move this forward. And if, for example, a privilege  
19:32:00 25 review is going to take a long time, I don't know that

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19:32:04 2 that is in anybody's interest. But, I mean, would it be  
19:32:07 3 possible to, you know, take random samples of these  
19:32:13 4 devices and see what you're hitting on. And if you're  
19:32:16 5 hitting on a fair amount, then maybe you need to go  
19:32:19 6 further. And if you're not hitting on anything, that is  
19:32:22 7 of interest, maybe you say, okay, well, in the grand  
19:32:28 8 scheme of things, we can live with that. Is there any  
19:32:32 9 merit to that approach?

19:32:35 10 MR. GROSS: I do have a thought on it, your  
19:32:37 11 Honor. I mean, first, to be candid, having done random  
19:32:40 12 sampling in discovery when it's merited in other cases,  
19:32:45 13 this doesn't strike me as the type of facts that lends  
19:32:49 14 itself well to anything statistically meaningful  
19:32:52 15 analysis. But, but, I do think the parties, in their  
19:32:56 16 work together up through this stage, have done something  
19:32:59 17 equivalent, which is run across enormous repositories,  
19:33:04 18 thousands of search terms to see where they hit and  
19:33:09 19 produce the responsive results. And the searches get  
19:33:14 20 run through large repositories. And so Moog provided  
19:33:18 21 search terms, and you know we had issues with some of  
19:33:19 22 them, and the parties worked together with search terms  
19:33:25 23 and provided responsive documents. So it's not as  
19:33:27 24 though Moog has no insight into what is in the company  
19:33:33 25 when you sort of use a shotgun approach to fine things

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19:33:34 2 relative to the lawsuit. We've done that. This is on  
19:33:36 3 top of that, what they are demanding. And, keep in mind  
19:33:40 4 what they are demanding it for. They say they need it  
19:33:43 5 to identify their own trade secrets. That is the only  
19:33:45 6 issue before the Court right now in this motion. They  
19:33:50 7 have enough information, I don't think random sampling.

19:33:53 8 MAGISTRATE JUDGE MCCARTHY: To identify,  
19:33:54 9 they know what their trade secrets are in the abstract,  
19:33:57 10 but the issue in this case is which trade secrets may  
19:34:03 11 have been misappropriated by the Defendants, and,  
19:34:05 12 therefore, will be at issue for the preliminary  
19:34:10 13 injunction motion.

19:34:13 14 MR. GROSS: Well, your Honor, I beg to  
19:34:14 15 differ with that just a little bit. Because, Moog has  
19:34:18 16 not shown us that they know what their trade secrets  
19:34:20 17 are. And I think what they will do, if they are  
19:34:23 18 permitted more indiscriminate discovery, they'll find  
19:34:29 19 things that look like Moog's, or things they identify  
19:34:30 20 look like Moog's and then they'll assert trade secrets  
19:34:32 21 in those. They should know what their trade secrets are  
19:34:35 22 now based on the steps they took to keep them trade  
19:34:38 23 secrets. And this is a hindsight risk that we want to  
19:34:41 24 guard against.

19:34:43 25 MAGISTRATE JUDGE MCCARTHY: I understand

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19:34:44 2 your concern about that, and I addressed it, I think, in  
19:34:48 3 my Decision and Order. I mean, there has to be a  
19:34:52 4 certain level of trust here. I know that is  
19:34:56 5 theoretically possible that they could generate a  
19:34:59 6 claimed trade secrets based on what they've seen in your  
19:35:02 7 documents, but you also have a record of what you  
19:35:06 8 developed and how you developed it. So, yeah, I can see  
19:35:10 9 both points, but I don't think that is a deal breaker.

19:35:13 10 Mr. Naqvi, were you going to say something?

19:35:18 11 MR. NAQVI: Yes, your Honor. And I  
19:35:19 12 appreciate your Honor taking the practical approach  
19:36:28 13 here. I would have a proposal here that I think may cut  
19:36:33 14 through this issue and tries to reach a middle ground  
19:36:35 15 and keeps in mind relevance and proportionality. I  
19:36:40 16 think Moog would be okay with, instead of entire images  
19:36:43 17 of all nine laptops being turned over, that Skyryse  
19:36:48 18 turns over three laptops of our choosing, and also  
19:36:50 19 provides file lists of all the laptops, that way --

19:36:53 20 MAGISTRATE JUDGE McCARTHY: I'm sorry,  
19:36:54 21 provides all of what for three of the laptops?

19:36:59 22 MR. NAQVI: Images of three laptops of our  
19:37:01 23 choosing, and as well as file lists for all nine  
19:37:04 24 laptops. That way we can see what the contents are, we  
19:37:06 25 can still do our forensic investigation for three of the

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19:37:09 2 laptops, and if we see there is a common pattern here,  
19:37:12 3 then we can meet and confer. And if there is a dispute,  
19:37:15 4 come back to the Court for good cause to get the other  
19:37:18 5 images. But, I think at least we'll be able to do a  
19:37:21 6 forensic analysis for three of the laptops, and we will  
19:37:24 7 also be able to see a file listing for all of the other  
19:37:26 8 laptops. And we'll determine if there are documents or  
19:37:29 9 certain groups of documents that are relevant and we can  
19:37:31 10 conduct our investigation that way.

19:37:33 11 MAGISTRATE JUDGE MCCARTHY: Okay. Have you  
19:37:34 12 made that proposal to Skyryse previously or is that a  
19:37:40 13 new idea?

19:37:41 14 MR. NAQVI: That is a new idea. I mean,  
19:37:43 15 previously, Skyryse's position was they were not going  
19:37:45 16 to turn over anything. We're trying to work to find a  
19:37:49 17 middle ground.

19:37:49 18 MR. GROSS: Your Honor, it is an interesting  
19:37:51 19 thought and it's the first we heard about it. There are  
19:37:54 20 problems with it. One of which is Moog should not be  
19:37:57 21 able to pick, as a laptop of its choosing, a laptop, the  
19:38:01 22 only reason we're talking about which, is because Gibson  
19:38:05 23 Dunn transparently explained it was connected to what we  
19:38:10 24 now know is an IT USB drive. There is no basis for  
19:38:26 25 discovery of a laptop that has nothing to do with Moog

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19:38:27 2 or this lawsuit. And that would permit them to go on  
19:38:32 3 the proverbial fishing expedition for millions of files  
19:38:34 4 that they've shown no relevance of showing. Laptops of  
19:38:37 5 their choosing is just not an appropriate way to proceed  
19:38:40 6 without other parameters. We have to limit it to things  
19:38:45 7 they made a factual showing of relevance on.

19:38:47 8 MAGISTRATE JUDGE MCCARTHY: Well, I think,  
19:38:49 9 because, folks, what you got to appreciate, and I think  
19:38:51 10 it's obvious to you, you know, I'm much more  
19:38:54 11 comfortable, for example, dealing with motions for stay,  
19:39:00 12 motions regarding privilege, things of that sort, than I  
19:39:04 13 am dealing with the nuts and bolts of a  
19:39:09 14 computer-generated information and what is or is not  
19:39:12 15 relevant. So, you're never going to get from me a  
19:39:17 16 detailed and perfectly satisfactory resolution which  
19:39:24 17 makes sense to everybody. You know, and I'm being  
19:39:30 18 candid in saying that, and I just got to get that out  
19:39:32 19 for you. And for that matter, and he might take  
19:39:35 20 offense, but I also don't think you'll get it from Judge  
19:39:38 21 Vilardo. There are limits to what we can do in a case  
19:39:41 22 like this. And, therefore, I think Mr. Naqvi's proposal  
19:39:46 23 may not be totally acceptable or satisfactory, but I  
19:39:50 24 think it's a good starting point, and I encourage the  
19:39:53 25 parties to explore that further. And if it's a matter

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19:39:57 2 of me choosing the three laptops, I'm happy to do that.  
19:40:01 3 I've got a dart board here, so I can. But, there has  
19:40:07 4 got to be a way. I guess it's an offshoot of what my  
19:40:11 5 proposal regarding random sampling was. And, you know,  
19:40:14 6 it may not work in this type of scenario, but in a  
19:40:20 7 sense, that is random sampling, because you're looking  
19:40:23 8 at three rather than nine. So, I'm -- because we got to  
19:40:27 9 move onto other issues --

19:40:29 10 MR. GROSS: Sure.

19:40:29 11 MAGISTRATE JUDGE McCARTHY: -- I'm going to  
19:40:30 12 encourage the parties to explore that further.

19:40:34 13 MR. GROSS: I agree with your Honor that  
19:40:36 14 it's a good start and we'll be happy to meet and confer  
19:40:39 15 with Mr. Naqvi and his team. It's certainly narrower  
19:40:43 16 than where we started with this motion, so we will be  
19:40:44 17 happy to do it.

19:40:44 18 MAGISTRATE JUDGE McCARTHY: And then we can  
19:40:46 19 reconvene, and now it's back to me. And as I said  
19:40:49 20 before, I'm going to proceed with this -- I'm going to  
19:40:52 21 proceed with this as though it's staying here. You  
19:40:57 22 know, if Judge Vilardo takes a different view, then he  
19:41:02 23 does. But, as I said at the outset, I don't think  
19:41:06 24 anything we're doing here will be a wasted effort  
19:41:09 25 because whether you need it here or you need it in

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19:41:15 2 California, you're going to need it. I'm happy to meet  
19:41:17 3 with you again. Like I said, we've been away from each  
19:41:20 4 other for two months or whatever, and I missed you.  
19:41:25 5 But, you know, I can set up more frequent meetings now.  
19:41:29 6 So, we'll come back to that at the end of today's  
19:41:32 7 session, and we'll set a date for a further reconvening  
19:41:37 8 on that issue and the other issues we're going to  
19:41:43 9 discuss today. Okay? All right?

19:41:45 10 MR. GROSS: Okay.

19:41:46 11 MR. NAQVI: Okay. Of course, your Honor.

19:41:48 12 Thank you.

19:41:49 13 MAGISTRATE JUDGE MCCARTHY: Let's move onto  
19:41:50 14 item two in Rena's letter, the volume shadow copies.

19:41:56 15 And who is going to speak?

19:41:58 16 MR. NAQVI: Thank you, your Honor. This is  
19:42:02 17 Kasim Naqvi and I will be speaking.

19:42:02 18 This is fortunately, for the Court, a  
19:42:04 19 narrower issue than that one before. And for the  
19:42:08 20 Court's edification, to the extent it's helpful, let me  
19:42:12 21 explain what a volume shadow copy is. Your Honor may  
19:42:16 22 have that question.

19:42:16 23 A volume shadow copy is a technology  
19:42:19 24 included Microsoft Windows that creates backup copies or  
19:44:29 25 snapshots of computer files or volumes even when the

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19:44:57 2 computer is in use. So, it can be used to access files  
19:45:02 3 or volumes that were subsequently deleted, basically a  
19:45:06 4 snapshot back in time.

19:45:07 5 In this case, it is undisputed that Ms. Kim,  
19:45:11 6 Defendant Kim, deleted what appears to be approximately  
19:45:14 7 780 Moog files from her Skyryse-issued Windows laptop.  
19:45:19 8 And that has been produced to iDS as device number one.  
19:45:24 9 The dispute right now is, Moog is requesting a  
19:45:27 10 production of the volume shadow copy for Ms. Kim's  
19:45:33 11 laptop at a certain point in time so Moog can understand  
19:45:36 12 exactly what was deleted, what happened to those files,  
19:45:40 13 what the contents of those files are, and so on and so  
19:45:42 14 forth. Skyryse's position is that Moog has already been  
19:45:45 15 provided a file listing for the 780 files and it doesn't  
19:45:50 16 need to access the volume shadow filing itself.

19:45:54 17 As your Honor can appreciate, this is a  
19:45:56 18 constant theme in the case that where Skyryse claims  
19:45:59 19 that file listings is all we need, and access to actual  
19:46:02 20 files or backups are not appropriate. But file listings  
19:46:06 21 are not sufficient for the exact same reason that we've  
19:46:08 22 already discussed with the trade secret identification  
19:46:10 23 and now the laptop issue. We need access to the volume  
19:46:14 24 shadow copy so we can inspect the files themselves and  
19:46:18 25 understand their contents. The files may have been

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19:46:21 2 altered, they may have been transposed, they may have  
19:46:24 3 been transferred to other locations, and this is all  
19:46:27 4 relevant and necessary information. And Skyryse, more  
19:46:32 5 recently, not in their papers, but in a meet and confer  
19:46:35 6 with us, has argued that, you know, it's more arguments  
19:46:39 7 about burden and cost. But iDS, the neutral vendor, has  
19:46:44 8 already processed the volume shadow copy data to prepare  
19:46:47 9 the file list. So, there would be minimal additional  
19:46:51 10 effort for iDS to export the entire volume shadow copy  
19:46:56 11 to a logical evidence file. And, you know, they may  
19:47:15 12 argue again about a privilege review. But, again, a  
19:47:18 13 privilege review should not be permitted to hold up  
19:47:20 14 discovery, especially where it involves deletion of 780  
19:47:25 15 files, 780 Moog files, by one of the Defendants in the  
19:47:29 16 case. This is not -- this is not another employee.  
19:47:32 17 This is either a file deleted by Ms. Kim from her  
19:47:37 18 laptop. Moog needs to have access to a snapshot of that  
19:47:42 19 laptop so we can understand exactly what those files and  
19:47:46 20 what was done.

19:47:46 21 MAGISTRATE JUDGE McCARTHY: Okay. Thank  
19:47:47 22 you.

19:47:47 23 Gabe, are you up or?

19:47:48 24 MR. GROSS: Yes, I'll handle this, your  
19:47:51 25 Honor. So, I think Mr. Naqvi was very clear on what

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19:47:54 2 their focus was here. It is the 780 files that were  
19:47:58 3 allegedly deleted. And they want to know if there are,  
19:48:01 4 I guess, remnants of them or information in them in  
19:48:05 5 backup copies. That, frankly, seems like reasonable  
19:48:08 6 targeted discovery to me. It's not what they are asking  
19:48:12 7 for. They are asking for 10 virtual shadow copies,  
19:48:16 8 which are entire backups of complete devices, and they  
19:48:19 9 want to get them from three devices, not just the one  
19:48:22 10 Ms. Kim used. So, it's another example of this over  
19:48:26 11 reach, where rather than focusing on the thing that they  
19:48:29 12 say they are alarmed about with a factual basis, they  
19:48:33 13 are asking for entire backups of laptops that contain  
19:48:36 14 millions of files with no showing of relevance and no  
19:48:40 15 respect for the burden that would impose. This would  
19:48:43 16 cover the 10 VSC, or virtual shadow copies they've asked  
19:49:14 17 for, would encompass over 100 gigabytes of data and  
19:49:21 18 about 8 million pages of data. And, your Honor, there  
19:49:23 19 is just no showing to impose that kind of burden on them  
19:49:23 20 to identify their own trade secrets. I would be happy  
19:49:28 21 to meet and confer with them about a way to get  
19:49:32 22 reasonable backups targeting those 780 files. That  
19:49:34 23 sounds targeted and perhaps productive to move this  
19:49:37 24 forward. But what they are asking for is orders of  
19:49:40 25 magnitude that they have made no showing they are

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19:49:43 2 entitled to.

19:49:44 3 MAGISTRATE JUDGE MCCARTHY: Okay.

19:49:46 4 MR. NAQVI: Your Honor, may I briefly  
19:49:50 5 respond? Respectfully, we're trying to -- we're happy  
19:49:52 6 to meet and confer. The problem is, we're trying to  
19:49:56 7 move this case along, and I think your Honor is trying  
19:49:58 8 to move this case along to the identification phase.  
19:49:58 9 And we've met with Skyryse and they have refused to  
19:50:00 10 provide any volume shadow copies. We've made these  
19:50:06 11 exact arguments to them and they refuse to provide  
19:50:08 12 anything.

19:50:09 13 MAGISTRATE JUDGE MCCARTHY: Well, whether  
19:50:11 14 they have refused to the past or not, what Mr. Gross  
19:50:13 15 said a minute ago is that they might be willing to give  
19:50:16 16 you volume shadow copies of the deleted files. Is that  
19:50:20 17 right?

19:50:21 18 MR. GROSS: That is where we should focus  
19:50:23 19 our efforts, your Honor. A single volume shadow copy is  
19:50:26 20 an entire laptop, it's millions of files. If it  
19:50:30 21 contains those 780, we're happy to look for those. That  
19:50:34 22 sounds appropriate. But, no, they are not entitled to a  
19:51:24 23 single, much less 10 entire volume shadow copies, but  
19:51:29 24 the focused 780 files, that is something we can work  
19:51:34 25 with.

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19:51:34 2 MAGISTRATE JUDGE MCCARTHY: Mr. Naqvi.

19:51:36 3 Because I have to say, when I was reviewing the papers,  
19:51:39 4 what struck me, if she has deleted files, so you don't  
19:51:43 5 know what was in them or without looking at them, then  
19:51:46 6 you should be able to get the shadow copies. Beyond  
19:51:51 7 that, I don't necessarily, at this point, see the need,  
19:51:56 8 maybe there is a reason, but it seems to me that would  
19:51:59 9 be a good starting point for your discussions if you're  
19:52:03 10 going to meet and confer, and I would encourage you both  
19:52:06 11 to do so, and then we can take it up again when we  
19:52:10 12 reconvene. And, again, I am willing to get back with  
19:52:13 13 you, both or with everybody, in two weeks or whatever  
19:52:18 14 time frame you suggest. But, but, you know, again, I  
19:52:24 15 don't mean to sound like a broken record, because I know  
19:52:26 16 this is a concern of all of yours, which is expense  
19:52:31 17 being one of them to everybody, but, also, this is a  
19:52:36 18 preliminary injunction motion, and those are normally  
19:52:38 19 supposed to move pretty quickly. And, you know, we're,  
19:52:43 20 through nobody's fault, but we're several months down  
19:52:45 21 the road, and we're nowhere close to getting a hearing  
19:52:48 22 date. So, I just, if I have to cut the baby in half on  
19:52:54 23 certain things and it's a less than perfect solution,  
19:52:58 24 that is what I'm going to do. But I am going to  
19:53:01 25 encourage you to talk with each other. And it does seem

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19:53:05 2 to me that you're entitled to shadow copies of the  
19:53:08 3 deleted files. If you can make a compelling argument as  
19:53:11 4 to why you need shadow copies of anything else, you  
19:53:15 5 know, I'll listen at our next get together. But, you  
19:53:18 6 know, we got other issues we've got to confront today as  
19:53:22 7 well. So, can I leave it at that for now?

19:53:27 8 MR. NAQVI: Thank you, your Honor. We're  
19:53:28 9 okay with that. And I think I'll just note for the  
19:53:31 10 record that we have requested other volume shadow  
19:53:33 11 copies. We will defer on those issues, while reserving  
19:53:36 12 our rights, but we'll meet and confer with counsel, at  
19:53:39 13 least as to Ms. Kim's device.

19:53:41 14 MAGISTRATE JUDGE MCCARTHY: Okay. Good,  
19:53:42 15 good, good, good.

19:53:43 16 Now we move to item three on Ms. Andoh's  
19:53:48 17 letter, which relates to the Defendants Pilkington and  
19:53:53 18 Kim, and their excision of documents prior to 2021. And  
19:54:02 19 the theory being that is when everything happened here?  
19:54:06 20 Is that -- who is going to -- let's see, Anthony Green,  
19:54:13 21 who is arguing on behalf of them?

19:54:17 22 MR. GREEN: My colleague Alex Truitt will  
19:54:20 23 handle this for us.

19:54:21 24 MR. TRUITT: Can you hear us?

19:54:23 25 MAGISTRATE JUDGE MCCARTHY: Yes, I can hear

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19:54:25 2 you and I can see you, so it's all good.

19:54:27 3 MR. TRUITT: So, I think the first place to  
19:54:29 4 start with this is that this is not a motion to seek the  
19:54:33 5 discovery to further the identification of trade  
19:54:36 6 secrets. This is a motion that, you know, if you look  
19:54:39 7 at their motion, you get the impression that they  
19:54:41 8 already know what their trade secret is, and they can  
19:54:44 9 identify it. And our position is if you can identify  
19:54:47 10 your trade secret, identify the trade secret, and then  
19:54:49 11 come back to us and we'll discuss about how to deal with  
19:54:52 12 these communications. Because what there is 700,000  
19:54:57 13 communications that are on these devices going back to  
19:55:00 14 1992. And there is an immense burden in reviewing them  
19:55:06 15 for the reasons that we have set forth. And what we're  
19:55:09 16 dealing with is a complaint. The complaint describes  
19:55:13 17 alleged acts of misappropriation in the winter of 2021.  
19:55:18 18 We have discovery requests that seek information going  
19:55:20 19 back to January 1st, 2021. And we've provided all of  
19:55:25 20 that. The Plaintiffs have every communication by the  
19:55:31 21 individual Defendants during their time at Moog. What  
19:55:34 22 they are looking for is private communications on their  
19:55:38 23 personal devices. And just to repeat what Mr. Gross has  
19:55:41 24 said, you know, the way discovery works under Federal  
19:55:45 25 Rule 26 is that the Plaintiff makes a showing of why

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19:55:49 2 there is probative value to this information sought, and  
19:55:52 3 then the Defendant says, well, yes, no, here is the  
19:55:56 4 burden of compliance. And what we're saying here is  
19:55:59 5 that there is an immense number of communications that  
19:56:02 6 are at issue. We've received no information from  
19:56:05 7 Plaintiff about why this could have any bearing on their  
19:56:08 8 claim, why this has any relationship to the alleged acts  
19:56:12 9 of misappropriation which occurred in the winter of  
19:56:15 10 2021, and they won't even confirm with us whether the  
19:56:19 11 alleged trade secrets at issue even existed during the  
19:56:21 12 time period that is at issue. So, the burden of  
19:56:25 13 requiring us to then, you know, go through hundreds of  
19:56:29 14 thousands of communications without any showing by the  
19:56:34 15 Plaintiff it's immense, it's over the top, and it's  
19:56:37 16 absurd. This is going to be months of attorney time.

19:56:40 17 MAGISTRATE JUDGE McCARTHY: I took you out  
19:56:42 18 of order, actually. I just wanted to identify you. And  
19:56:45 19 then, I guess, I was going to hear from Moog first, but  
19:56:49 20 then from you, but since you have spoken, that's fine.

19:56:52 21 Let me ask you a couple of questions that  
19:56:54 22 might not be directly relevant to this issue, but I  
19:56:58 23 think would be, might be, indirectly relevant. First of  
19:57:02 24 all, are either of them, have either of them obtained  
19:57:06 25 new employment?

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19:57:09 2 MR. TRUITT: At this time, we have not been  
19:57:12 3 informed they have obtained new employment.

19:57:15 4 MAGISTRATE JUDGE MCCARTHY: I'm sorry?

19:57:16 5 MR. TRUITT: At this time, we have not been  
19:57:19 6 informed either of them have obtained new employment.

19:57:21 7 MAGISTRATE JUDGE MCCARTHY: Secondly, have  
19:57:23 8 there been any developments that they are aware of in  
19:57:25 9 the criminal investigation.

19:57:28 10 MR. TRUITT: At this time we've not been  
19:57:30 11 given any update by the Government or anything.

19:57:32 12 MAGISTRATE JUDGE MCCARTHY: So I take it no  
19:57:33 13 charges have been filed, right?

19:57:35 14 MR. TRUITT: Nothing at this time.

19:57:43 15 MAGISTRATE JUDGE MCCARTHY: All right. I  
16:52:43 16 will turn to Mr. Naqvi, I guess, and then I'll hear from  
16:52:46 17 you again if you need, okay? Go ahead.

16:52:48 18 MS. ANDOH: Thank you, your Honor. First,  
16:52:51 19 you know, I think we consistently hear re-arguments  
16:52:55 20 about the sequencing and of trade secret identifications  
16:52:58 21 in this case. And your Honor already ruled on that, so  
16:53:01 22 that cannot be a basis to oppose our motion. There are  
16:53:04 23 two issues here. There is a procedural issue and then  
16:53:07 24 there is a relevance issue. So, let me first address  
16:53:10 25 the procedural issue. There is no court order,

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16:53:12 2 stipulation or other agreement that allows what the  
16:53:15 3 individual Defendants are trying to do here. The Court  
17:06:21 4 entered a very detailed inspection protocol that does  
17:06:25 5 not allow any excision for reasons other than for  
17:06:30 6 privilege or privacy. And now we're trying to get large  
17:06:33 7 scale excision based on relevance. We already litigated  
17:06:37 8 this issue heavily. If I recall correctly, the  
17:06:39 9 independent Defendants did not submit their own  
17:06:42 10 information protocol. They did not raise this as being  
17:06:44 11 an issue before, that there may be large volumes of  
17:06:47 12 communication that should not be turned over. This  
17:06:50 13 should have been brought up six months ago when the  
17:06:53 14 inspection protocol was entered. And in compliance with  
17:06:56 15 the inspection protocol, many devices have been turned  
17:07:00 16 over to iDS, but, and I don't want to speak for Skyryse,  
17:07:06 17 but Moog has not excised any material on the basis of  
17:07:59 18 relevance because that was not permitted under the  
17:08:01 19 inspection protocol. And, so, to the extent the  
17:08:04 20 individuals claim that all pre 2021 communications are  
17:08:09 21 private, which I think that blanket assertion is  
17:08:11 22 improper on its face, it's also important to note that  
17:08:14 23 the inspection protocol requires any documents excised  
17:08:19 24 for privilege or privacy be specifically identified in a  
17:08:24 25 log. That has not occurred here. That is a procedural

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17:08:27 2 issue. None of the courts allow this practice.

17:08:30 3 Let's go to relevance. Mr. Truitt argued  
17:08:33 4 that we have not made any showing, but that is just not  
17:08:37 5 true. As alleged in our complaint, and as set forth in  
17:08:40 6 our papers, the individual Defendants were hired in 2012  
17:08:43 7 and 2013. We've already offered, we can get rid of  
17:08:47 8 everything before 2013. I understand some of these  
17:08:51 9 communications go back to the 1990s. We don't need  
17:08:55 10 them. We have already offered that to the individual  
17:08:57 11 Defendants. And specifically to the trade secrets in  
17:09:01 12 this case, we explicitly alleged, they started working  
17:10:07 13 some of those programs in 2013. One of the programs is  
17:10:16 14 ERTOS, E-r-t-o-s. That is one of the programs that is  
17:10:18 15 identified in our complaint that Mr. Pilkington actually  
17:10:22 16 spearheaded that program, and that is one of the  
17:10:24 17 programs that we've alleged was misappropriated. A  
17:10:28 18 large volume of files for that program was  
17:10:30 19 misappropriated. And so, you know, we've seen and we  
17:10:34 20 have put in our papers several examples of  
17:10:36 21 communications between Mr. Pilkington and Ms. Kim where  
17:10:40 22 they openly discuss Moog trade secrets, where they  
17:10:43 23 openly discuss disclosing Moog trade secrets to third  
17:10:46 24 parties.

17:10:47 25 MAGISTRATE JUDGE McCARTHY: Yeah, no, I've

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17:10:48 2 seen those. But some of those when -- let me see here.  
17:10:54 3 I mean don't those -- the things that you cited, I think  
17:11:00 4 it's exhibit B to a Rena Andoh's declaration 210,  
17:11:08 5 although the documents are at 210-11, but, like, they  
17:11:13 6 are, for example, I'm not going to, because we're in a  
17:11:16 7 public proceeding, so I'm not going to -- there is  
17:11:20 8 reference to a particular text exchange on December 9th  
17:11:26 9 of 2021 at, I believe, 6:59 a.m. where Mr. Pilkington  
17:11:35 10 said certain things that he plans to do and references  
17:11:38 11 that program. But that is in 2021. So, why do you need  
17:11:46 12 -- and I agree with you in terms of what the protocol  
17:11:49 13 says. But, just in terms of, again, a practical  
17:11:54 14 resolution here, why -- that would be information that  
17:11:59 15 you -- well, first of all, you already have it, because  
17:12:02 16 you've seen it, but I can see that what happened after  
17:12:06 17 2021 is certainly relevant. What they did with whatever  
17:12:10 18 they developed is certainly relevant. But, what they  
17:12:15 19 did while they were working for Moog before they left  
17:12:20 20 for Skyryse or before they left in general, why is that  
17:12:24 21 relevant? I presume you would already know that.

17:12:27 22 MS. ANDOH: Well, your Honor, we're seeking  
17:12:30 23 communications from their personal devices. And so to  
17:12:33 24 the extent they used personal devices to share Moog  
17:12:37 25 information between themselves for unauthorized purposes

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17:12:40 2 or with third parties, we need to be able to investigate  
17:12:44 3 that. And they had access to Moog trade secrets  
17:12:47 4 beginning in 2013. And we can't provide those examples  
17:12:51 5 to the Court because we don't have them. That is how  
17:12:54 6 we're going to get them. And, your Honor, you brought  
17:12:56 7 up a great point with practicality. What is the  
17:12:59 8 practical hurdle here? There has been no claim that any  
17:13:02 9 of these communications are privileged. There is a very  
17:13:05 10 broad privacy concern. But from our perspective, the  
17:13:10 11 privacy concern is completely eliminated by all of the  
17:13:32 12 strict protections in the inspection protocol. It's not  
17:13:35 13 like Moog, that the client is going to see these  
17:13:38 14 materials. These communications and whatever other  
17:13:40 15 documents there are, are only going to be accessible to  
17:13:44 16 Moog's outside counsel and its experts. So, there has  
17:13:47 17 been no claim of privilege burden. And, you know, and  
17:13:51 18 any privacy concern is done with with the inspection  
17:13:54 19 protocol. That is why we have a detailed protective  
17:13:58 20 order and inspection protocol. Your Honor, that is why  
17:14:01 21 we met and conferred with the individual Defendant  
17:14:03 22 counsel, and they articulated some of the volume  
17:14:06 23 concerns they had which helped narrow the scope of what  
17:14:10 24 we're requesting, we removed everything prior to 2013,  
17:14:13 25 and we're requesting they produce communications on

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17:14:16 2 these devices after 2013 so we can determine, in their  
17:14:19 3 personal capacity, to what extent they disclosed Moog  
17:14:24 4 trade secrets to third parties.

17:14:25 5 MAGISTRATE JUDGE MCCARTHY: Okay. Mr.  
17:14:26 6 Truitt, back to you.

17:14:28 7 MR. TRUITT: Couple of things here. You  
17:14:30 8 know, first, the protective order and inspection  
17:14:34 9 protocol, it required the production of devices used in  
17:14:38 10 the year 2021 to the date of the complaint. So, again,  
17:14:42 11 with the allegations in the complaint, and the time  
17:14:44 12 frame sought in the discovery requests, it's all saying  
17:14:49 13 2021 is the relevant period. And our position is that  
17:14:53 14 communications on their personal devices that have no  
17:14:58 15 relationship to the complaint or anything that has been  
17:15:02 16 alleged are necessarily private and properly withheld  
17:15:06 17 under the precise terms of the inspection protocol at  
17:15:10 18 issue. So, I would just say that, you know, we disagree  
17:15:14 19 with Mr. Naqvi's representation of what our rights are  
17:15:17 20 under that, and that we have properly objected on the  
17:15:20 21 grounds of privacy, which is permitted under the  
17:15:24 22 inspection protocol.

17:15:25 23 The next thing is that, what we're dealing  
17:15:31 24 with here is still a situation where there is going to  
17:15:35 25 be immense burden, and all we've received from the

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17:15:39 2 Plaintiff is simply speculation, which, again, is  
17:15:41 3 nowhere in the complaint, it's speculation that  
17:15:44 4 such-and-such is happening, and that, you know, the  
17:15:49 5 individual Defendants are doing this vague evil. And  
17:15:53 6 what we're asking for is not that these files be  
17:15:58 7 permanently excised, but that we get some sort of  
17:16:00 8 identification of the trade secret, and we get some sort  
17:16:03 9 of communication from Mr. Naqvi's client about what  
17:16:07 10 might be relevant in these massive files. And even from  
17:16:12 11 the period that Mr. Naqvi has truncated his claim to,  
17:16:16 12 it's still hundreds of thousands of communications. And  
17:16:20 13 once they do that, we will then go and, you know,  
17:16:24 14 continue to meet and confer to figure out if there is a  
17:16:28 15 way to reduce the burden, okay? But, right now it is  
17:16:32 16 just all burden on the individual Defendants. And what  
17:16:35 17 we haven't heard from Mr. Naqvi is why these pre-2021  
17:16:40 18 communications are relevant to their identification of  
17:16:44 19 the trade secrets at issue. What you see in the motion  
17:16:47 20 papers is that the Plaintiff has a great idea of what  
17:16:51 21 the trade secrets at issue are, but they won't identify  
17:16:55 22 it. Our position is, identify them, let's get this show  
17:16:59 23 on the road. And until you do so, there is no reason to  
17:17:02 24 have this unilaterally and obscene burden placed on the  
17:17:05 25 individual Defendants.

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17:17:09 2 MR. NAQVI: Your Honor, if I may briefly  
17:17:11 3 reply?

17:17:11 4 MAGISTRATE JUDGE MCCARTHY: Go ahead.

17:17:12 5 MR. NAQVI: Again, for now probably the  
17:17:14 6 third or fourth time, we're hearing a reargument of the  
17:17:17 7 sequencing of discovery. Mr. Truitt wants Moog to  
17:17:21 8 identify it's trade secrets before they provide  
17:17:24 9 discovery. We've already dealt with that issue. So,  
17:17:27 10 again, let's be very clear about that.

17:17:29 11 And, your Honor, I want to direct your Honor  
17:17:31 12 to the complaint where we do implicate the time period  
17:17:34 13 of 2013 to present. We specifically alleged in  
17:17:37 14 paragraphs 13 and 48 that Ms. Kim and Mr. Pilkington  
17:17:41 15 were hired in 2012 and 2013. We allege in paragraph 53  
17:17:47 16 that Pilkington and his team built ERTOS beginning in  
17:17:52 17 2013. We alleged paragraph 117, that ERTOS is one of  
17:17:57 18 the programs from which large volume of files were  
17:18:01 19 completely misappropriated. And, your Honor, I think  
17:18:02 20 it's very important to make very clear, that the  
17:18:06 21 individual Defendants stipulated to a court order to  
17:18:09 22 turn over these devices wholesale. And that stipulation  
17:18:09 23 did not contain any limitation. And the inspection  
17:18:17 24 protocol, which is somewhat of an extention of the March  
17:18:17 25 11th order, did not contain any limitations. If there

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17:18:21 2 were concerns about what this process would entail, they  
17:18:25 3 should have been dealt with long ago.

17:18:26 4 The problem we're having here is the  
17:18:28 5 individual Defendants stipulated to a court order to  
17:18:31 6 turn over devices wholesale. And just as Moog is  
17:18:34 7 getting access to these devices, they are trying to walk  
17:18:37 8 back the provisions of the stipulated order saying they  
17:19:39 9 should have access to some of the materials and not  
17:19:42 10 others. And, your Honor, the unfairness here, honestly,  
17:19:46 11 if the parties were able to excise materials based on  
17:19:49 12 relevance, Moog, and I don't want to speak on behalf of  
17:19:52 13 the Skyryse, but the other parties in this case may have  
17:19:55 14 elected to do so. But, of course, that creates an  
17:19:59 15 extraordinary amount of time and burden on the other  
17:20:02 16 parties. And way to cut through that is turn the  
17:20:04 17 devices over wholesale. They agreed to the stipulated  
17:20:08 18 order. The inspection protocol does not permit what  
17:20:12 19 they are trying to do. We're seeking compliance with  
17:20:14 20 the Court's order, that is all we are trying to do.

17:20:17 21 MR. TRUITT: Your Honor, if I may just very  
17:20:19 22 briefly. Mr. Naqvi keeps saying we're claiming it's  
17:20:23 23 relevance. We're not claiming relevance. We're talking  
17:20:27 24 burden and the immense undue burden that his client is  
17:20:32 25 trying to inflict on our client. And when you evaluate

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17:20:36 2 burden, you have to look at relevance. Mr. Naqvi's  
17:20:39 3 motion is a rule 23 motion. Everything we need to know  
17:20:43 4 is within Rule 26. And Rule 26, and every case law that  
17:20:47 5 deals with this question says that the Plaintiff needs,  
17:20:50 6 or the party seeking disclosure needs to identify the  
17:20:53 7 relevance, and then it's weighed against the burden to  
17:20:58 8 the party who is seeking to withhold production. And so  
17:21:02 9 what we have here is a question of whether this  
17:21:05 10 information is relevant to the individual Defendants,  
17:21:10 11 I'm sorry, the Plaintiff's identification of the trade  
17:21:12 12 secrets. And the fact that Mr. Kim -- or Mr. Pilkington  
17:21:17 13 and Ms. Kim were employed in 2013, completely  
17:21:21 14 irrelevant. The fact that there was some work on the  
17:21:25 15 ERTOS, that existed prior to 2021, if that really is a  
17:21:29 16 trade secret at issue, completely irrelevant. The  
17:21:31 17 reason why I am saying that they need to identify the  
17:21:35 18 trade secrets is because that is what we are seeking  
17:21:38 19 discovery for right now. We are seeking discovery for  
17:21:42 20 the identification of trade secrets. And what Mr. Naqvi  
17:21:45 21 is asking for is just not it.

17:21:48 22 MS. ANDOH: Your Honor, I just want to make  
17:21:50 23 one very quick point.

17:21:51 24 MAGISTRATE JUDGE McCARTHY: Yeah.

17:21:52 25 MS. ANDOH: There is no burden here. The

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17:21:54 2 devices have already been turned over to iDS. They  
17:21:58 3 instructed iDS to withhold portions of images to us.  
17:22:02 4 This is not a case they have to go back and collect and  
17:22:05 5 process. It's all there, there is no additional burden.  
17:22:08 6 I just want to make that very clear.

17:22:10 7 MR. TRUITT: We have to review hundreds of  
17:22:12 8 thousands --

17:22:12 9 MAGISTRATE JUDGE MCCARTHY: For what? You  
17:22:14 10 have to review for personally private information

17:22:16 11 MR. TRUITT: For personal information, for  
17:22:19 12 personal private information, in the event there is  
17:22:20 13 attorney/client communications, they are not going to be  
17:22:23 14 related to this action, but could be related to personal  
17:22:26 15 matters. Again, like, this could have a seamless  
17:22:29 16 receipt in here that has their credit card information.  
17:22:33 17 The burden that is going to go into reviewing hundreds  
17:22:36 18 of thousands of communications is immense. It's going  
17:22:39 19 to take the attorneys at our firm months to complete.  
17:22:42 20 And, if Mr. Naqvi wants to narrow this down and give us  
17:22:46 21 search terms or give us this, that or the other thing,  
17:22:50 22 that is something to consider. But the wholesale review  
17:22:53 23 of hundreds of thousands of communications is an absurd  
17:22:57 24 burden when Mr. Naqvi refuses to provide this  
17:23:01 25 information to us.

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17:23:01 2 MAGISTRATE JUDGE MCCARTHY: Okay, folks.

17:23:03 3 Look, again, we're not living in a perfect world. We're  
17:23:06 4 living in a practical world. I do understand Moog's  
17:23:11 5 position about what the protocol says, but I also want  
17:23:17 6 to move this case forward, and both in terms of expense,  
17:23:22 7 but possibly even more so in terms of time delay. I  
17:23:29 8 think you need to put a -- you need to -- you've offered  
17:23:33 9 to cut it off at 2013, I think you need to add a couple  
17:23:37 10 more years onto that and go back to, I don't know, 2016,  
17:23:42 11 something of that sort, cut it in half, and then work  
17:23:46 12 with that. But --

17:23:48 13 MR. NAQVI: 2016 is okay with us, your  
17:23:53 14 Honor.

17:23:53 15 MR. TRUITT: We haven't looked at the entire  
17:23:55 16 amount of communications that are available in 2016, so  
17:23:58 17 I don't have the information there. But I still would  
17:24:00 18 like to meet and confer with Mr. Naqvi about some sort  
17:24:03 19 of search parameters, search terms, if they want us to  
17:24:07 20 look at --

17:24:08 21 MAGISTRATE JUDGE MCCARTHY: We'll talk about  
17:24:09 22 that. If search terms can help, good, but I'm going to  
17:24:13 23 say 2016. We're going to reconvene on these three  
17:24:18 24 issues in a couple of weeks anyway, so talk to each  
17:24:21 25 other with my mind-set as the back drop. I'm telling

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17:24:24 2 you kind of where I'm leaning right now, and I haven't  
17:24:28 3 definitively decided anything. But we'll leave it at  
17:24:33 4 that, because we're now an hour and a half into things  
17:24:36 5 and I want to turn to the other motion. Okay.

17:24:42 6 And then when we're all said and done here,  
17:24:45 7 I'll give you a date and time in a couple of weeks to  
17:24:48 8 come back and talk about things, okay? Is that fair  
17:24:52 9 enough?

17:24:52 10 MR. NAQVI: Yes, your Honor, thank you.

17:24:54 11 MAGISTRATE JUDGE McCARTHY: Everybody good?

17:24:55 12 All right.

17:24:55 13 Then let's turn to motion 213. And who --  
17:25:03 14 and, you know, I have reviewed the motion papers, folks,  
17:25:07 15 so, you can jump in as you see fit.

17:25:16 16 MS. YIP: Moog is happy to go first, your  
17:25:18 17 Honor, if you don't have a preference.

17:25:20 18 MAGISTRATE JUDGE McCARTHY: It's your  
17:25:20 19 motion.

17:25:22 20 MS. YIP: Well, yeah, so, Skyryse filed this  
17:25:25 21 additional motion to enter their source code protocol,  
17:25:29 22 but it is really just an extension of the issues we  
17:25:32 23 previously discussed and an extension of Moog's motion  
17:26:56 24 to compel their production of source code. So, I'm  
17:26:59 25 happy to go first and address the issue.

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17:27:01 2 MAGISTRATE JUDGE MCCARTHY: Okay.

17:27:02 3 MS. YIP: I think that it's important here  
17:27:04 4 to just step back for a moment and look at this issue in  
17:27:09 5 the big picture. There is just no reason whatsoever to  
17:27:14 6 add a new inspection protocol to this case. The  
17:27:17 7 inspection protocol has been discussed at length during  
17:27:21 8 this hearing already. It's been doing a fine job. The  
17:27:24 9 Court's inspection protocol has been demonstrably  
17:27:28 10 effective for over five months. Both parties have been  
17:27:31 11 inspecting source code pursuant to the Court's  
17:27:33 12 inspection protocol, including Skyryse's source code.

17:27:37 13 MAGISTRATE JUDGE MCCARTHY: And, Ms. Yip,  
17:27:39 14 let me interject for a minute, I do apologize. I see  
17:27:42 15 that 213 is Skyryse's motion, so, but you're already  
17:27:47 16 into it, so go ahead.

17:27:49 17 MS. YIP: Okay. So, both parties have been  
17:27:53 18 inspecting source code pursuant to the Court's  
17:29:03 19 inspection protocol, including Skyryse's source code,  
17:29:05 20 and both parties have produced source code pursuant to  
17:29:09 21 the Court's inspection protocol. And the Court's  
17:29:12 22 inspection protocol has already proven effective at  
17:29:14 23 uncovering use of Moog's source code, including verbatim  
17:29:21 24 copying. Moreover, the Court's inspection protocol is  
17:29:23 25 extremely secure. That is one of the issues that

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17:29:25 2 Skyryse has been raising throughout the briefing. But,  
17:29:28 3 when the Court entered the inspection protocol in the  
17:29:30 4 first place, the Court expressly determined that it was  
17:29:34 5 secure. And there is no reason to question that now.  
17:29:36 6 Our expert, Bruce Pixley, who has been conducting an  
17:29:41 7 inspection pursuant to the Court's protocol for over  
17:29:44 8 five months stated, under oath, in a declaration  
17:29:47 9 submitted to this Court, "In my decades of experience in  
17:29:51 10 working with Defendants, Plaintiffs, and as a  
17:29:54 11 third-party neutral, this is the most comprehensive  
17:29:58 12 protocol I have seen established for both parties to be  
17:30:01 13 able to conduct a thorough review of all data in a  
17:30:04 14 secure and controlled environment. Mr. Pixley also  
17:30:10 15 testified, there is no way for any reviewer to transmit  
17:30:13 16 source code or any other sensitive data out of the  
17:30:16 17 inspection environment.

17:30:17 18 Skyryse has never submitted any rebuttal  
17:30:21 19 testimony to any of this. To this day, Skyryse has not  
17:30:26 20 articulated any reason why this particular subset of the  
17:30:29 21 source code merits special treatment or justifies adding  
17:30:33 22 a whole new layer of complexity and cost to this case.  
17:30:38 23 The parties have spent over five months working within  
17:30:42 24 the Court's inspection protocol, expending time and  
17:30:45 25 resources to get everything set up and running smoothly

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17:30:49 2 with a neutral vendor, getting everybody set up with  
17:30:53 3 inspection laptops and so forth, and it's working. To  
17:30:56 4 add a second protocol at this point is just completely  
17:31:00 5 gratuitous. This court is empowered to tailor the  
17:31:04 6 protocol to the needs of this case, which is truly an  
17:31:10 7 extraordinary case, and the Court has already done so in  
17:31:13 8 the form of the inspection protocol.

17:31:14 9 MAGISTRATE JUDGE MCCARTHY: Let me just  
17:31:15 10 interrupt for a second. I know they'll raise this, they  
17:31:18 11 have. What about the argument that the protocol, which  
17:31:21 12 I approved, dealt with or, by its terms, dealt with a  
17:31:29 13 mixture of Moog and Skyryse source code, and what you're  
17:31:38 14 talking about now is only Skyryse's source code?

17:31:44 15 MS. YIP: So, to be clear, the inspection  
17:31:46 16 protocol is not limited to a mix of information between  
17:31:51 17 Moog and Skyryse. And we can see that from the data  
17:31:54 18 that has already been turned over. The Moog data that  
17:31:57 19 was turned over, we turned over our source code, it's  
17:32:00 20 not a mix of from our own laptops, right. It's our  
17:32:04 21 stuff and we turned it over. I think what your Honor  
17:32:07 22 might be thinking about is Skyryse's argument that the  
17:32:11 23 TRO prohibits this, which is just, which is incorrect.  
17:32:16 24 The TRO does not prohibit Skyryse from producing its own  
17:32:23 25 source code to iDS. And, in fact, Skyryse already has,

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17:32:27 2 by its own admission. The TRO only prohibits Skyryse  
17:32:34 3 from producing information to iDS if the information is  
17:33:02 4 entirely Moog's, which makes sense, because that should  
17:33:05 5 just be returned to us directly. It's all ours. The  
17:33:08 6 TRO says nothing about whether Skyryse can make its own  
17:33:13 7 source code available for inspection through iDS. If  
17:33:16 8 you look at the inspection protocol, what it governs is  
17:33:19 9 information that is turned over to iDS. It doesn't say  
17:33:23 10 that information turned over to iDS must be X, Y or Z.  
17:33:26 11 It's what the parties turn over to iDS. And here, it  
17:33:29 12 makes perfect sense to have all of the source code  
17:33:32 13 turned over to iDS, because iDS is secure for all of the  
17:33:37 14 reasons I discussed earlier. And the parties already  
17:33:40 15 turned over source code to iDS. What Skyryse is  
17:33:44 16 withholding, of course, we don't know what the volume,  
17:33:47 17 we haven't seen it, but my presumption is relative to  
17:33:52 18 everything already turned over, Mr. Gross discussed at  
17:33:54 19 length, the volume of data that has been already turned  
17:33:57 20 over to iDS, what they are withholding now is likely a  
17:34:01 21 relatively small subset of the information at issue  
17:34:06 22 here. There is no reason to have this small subset of  
17:34:10 23 information cause the implementation of a brand new  
17:34:15 24 inspection protocol that governs (inaudible.) There is  
17:34:21 25 already an inspection protocol in place, that is robust,

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17:34:24 2 and the parties have been using and makes sense to use  
17:34:27 3 here.

17:34:27 4 MAGISTRATE JUDGE MCCARTHY: Before I hear  
17:34:28 5 from Skyryse, and apologies to Skyryse, it was your  
17:38:08 6 motion and I preempted you, sorry about that.

17:38:10 7 But, Ms. Yip, do I understand that Moog's,  
17:38:19 8 one of their primary thrusts in arguing for the -- that  
17:38:25 9 you need to have computerized side-by-side analysis; is  
17:38:32 10 that one of your concerns.

17:38:35 11 MS. YIP: Yes, that is.

17:38:37 12 MAGISTRATE JUDGE MCCARTHY: They are saying  
17:38:38 13 you can bring in your paper copies and you can have up  
17:38:42 14 to 100 pages or something. And your argument is that  
17:38:45 15 that is just not practical in a case like this.

17:38:49 16 MS. YIP: Correct, right, right, right. So  
17:38:51 17 for Moog's expert to bring in paper copies of our own  
17:38:55 18 source code, which is voluminous, into a separate  
17:38:58 19 inspection, physical inspection room, doesn't make sense  
17:39:01 20 and doesn't reflect the realities of this case. So,  
17:39:05 21 under such an arrangement, as you noted, your Honor, the  
17:39:09 22 parties, with respect to source code, would not be on  
17:39:14 23 the same computer. And because it's not on the same  
17:40:03 24 computer our expert cannot use the software tools that  
17:40:05 25 he needs to search for and compare different files.

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17:40:08 2 Instead, he would have to literally look at a page of  
17:40:12 3 his, Moog's source code, and then manually sift through  
17:40:15 4 hundreds or thousands of pages of Skyryse's code to find  
17:40:20 5 the corresponding page. And if he can't find the  
17:40:23 6 corresponding page using this manual visual method after  
17:40:27 7 maybe dozens or hundreds of hours, he would have to  
17:40:30 8 manually and visually compare the pages to see what  
17:40:33 9 similarities are, which makes no sense when over 40,000  
17:40:39 10 files of Moog's source code were taken by Skyryse and  
17:40:42 11 can potentially be found in Skyryse's code. And in  
17:40:45 12 addition to all of that, because the process would be  
17:40:48 13 manual, it would not only be slow, but can cause a lot  
17:40:53 14 of delay, not only slow and can cause a lot of delay  
17:40:56 15 but, there could be error as well. By contrast, under  
17:41:01 16 the Court's protocol, both parties is on the same  
17:41:05 17 computer hosted by the same third party, and our expert  
17:41:09 18 can use software for the analysis and comparison.  
17:41:12 19 Skyryse new protocol, it cannot.

17:41:18 20 MAGISTRATE JUDGE MCCARTHY: Under the  
17:41:18 21 current protocol, they can be observed what's going on  
17:41:23 22 at any point to make sure no dastardly deeds are  
17:41:29 23 occurring.

17:41:30 24 MS. YIP: Absolutely, it's video recorded  
17:41:32 25 and iDS has a person present at all times.

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17:41:35 2 MAGISTRATE JUDGE MCCARTHY: Who is going to  
17:41:36 3 argue for Skyryse?

17:41:41 4 MR. GROSS: You get to hear my voice again,  
17:42:36 5 your Honor. That is Gabe Gross for Skyryse. I'll be  
17:42:37 6 arguing for Skyryse, thank you.

17:42:38 7 MAGISTRATE JUDGE MCCARTHY: Okay.

17:42:39 8 MR. GROSS: I would like to address what Ms.  
17:42:41 9 Yip covered, and I think most of that is actually in the  
17:42:44 10 briefing in front of your Honor and touches on what we  
17:42:46 11 discussed last time we had a hearing on this issue.  
17:42:48 12 After I respond to that, I would like to be brief, I  
17:42:51 13 would like to address a new issue that came up since the  
17:42:55 14 initial briefing and supplemental briefing went in.

17:42:58 15 So, first of all, Ms. Yip represented that  
17:43:03 16 Skyryse has already turned over source code under the  
17:43:06 17 iDS protocol. And part of her argument that I think was  
17:43:11 18 intended to convey that things are going swimmingly  
17:43:14 19 under the iDS protocol. It's true that some source code  
17:43:17 20 has been part of what Skyryse has provided under the iDS  
17:43:21 21 protocol because the stipulation and order in this case  
17:43:27 22 required Skyryse to turn over to iDS anything that could  
17:43:31 23 arguably contain Moog information. And we ran those  
17:43:34 24 search term hits that I told you about and found stuff  
17:43:38 25 that could be mixed. So, there is some source code on

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17:43:40 2 the iDS protocol. And, as Moog has made very clear,  
17:43:44 3 they think that has been very fruitful for them, and  
17:43:47 4 they've had significant and extensive access to it,  
17:43:50 5 which they think they've been benefited by. So they are  
17:43:54 6 getting mileage out of the iDS protocol. But I want to  
17:43:58 7 be absolutely clear, while Ms. Yip said the TRO, the  
17:44:01 8 stipulated restraining order in this case, doesn't  
17:44:05 9 prohibit Skyryse from turning over its own code or  
17:44:08 10 either side from turning over its own code to iDS, when  
17:44:12 11 there is no reason to think it has mixed information of  
17:44:15 12 both sides in it, it doesn't require it. And so the  
17:44:19 13 whole purpose of the iDS protocol is to deal with  
17:44:24 14 information that might contain both sides' sensitive  
17:45:22 15 data by entrusting it with a trusted third party. You  
17:45:23 16 see that, for example, in paragraph two of docket No.  
17:45:27 17 25, which is the stipulation and order about producing  
17:45:31 18 information data and preserving data and running  
17:45:36 19 forensic searches. What that stipulation says is, this  
17:45:40 20 sort of non-public information has been integrated,  
17:45:44 21 combined, inserted, modified, updated, upgraded or  
17:45:49 22 otherwise used by a Defendant in a matter that  
17:45:52 23 necessarily includes the property -- I'm sorry, your  
17:45:57 24 Honor, I think I bungled the quote. Let me paraphrase  
17:46:00 25 instead of trying to quote it right.

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17:46:02 2 MAGISTRATE JUDGE MCCARTHY: I've got it on  
17:46:03 3 my screen right now. You're talking about paragraph  
17:46:06 4 two, right?

17:46:09 5 MR. GROSS: That's right. And the idea  
17:46:11 6 behind it, and this is repeated through the TRO, if  
17:46:14 7 there is information that necessarily integrates one  
17:47:37 8 party's information with the other, it can go to this  
17:47:40 9 neutral vendor, which I don't think had been selected at  
17:47:43 10 the time that was entered. But the parties put that  
17:49:02 11 vendor in place. We have the neutral third party there  
17:49:05 12 to deal with mixed information. And then the protective  
17:49:09 13 order addresses source code and says, the parties will  
17:49:12 14 negotiate another stipulation.

17:49:14 15 So, Ms. Yip said there is no reason for the  
17:49:17 16 court to order, a second source code order. It isn't a  
17:49:21 17 second source code order. We need to negotiate a source  
17:49:25 18 code order to govern the discovery of source code in  
17:49:48 19 this case. And the one that we have proposed and we've  
17:49:51 20 included with our motion is one that is very similar to  
17:49:54 21 those used by courts around the country. You've seen in  
17:49:58 22 the letter briefing, we cited, I understand Mr. Pixley  
17:50:00 23 has his opinion on that, but I don't think his  
17:50:42 24 experience, you know, holds a candle to that of this  
17:50:46 25 Court, of the District Court in Delaware, of the Central

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17:50:50 2 District of California, the district courts in Texas and  
17:50:52 3 the district courts in North Carolina and Pennsylvania  
17:50:56 4 that they do it differently than Mr. Pixley is proposing  
17:50:59 5 to do it. So, your Honor, this would not be gratuitous  
17:51:02 6 or it would not be duplicative. It would be the first  
17:51:06 7 order of its kind in this case designed to deal with  
17:51:08 8 what, frankly, is routine discovery of source code in  
17:51:13 9 intellectual property cases.

17:51:14 10 Your Honor, Ms. Yip, also said that Skyryse  
17:51:17 11 was withholding source code. I just have to take issue  
17:51:22 12 with that because it's wrong. One, we have produced a  
17:51:28 13 number of the source code that falls in the potentially  
17:51:30 14 mixed category that she was talking about; but, two,  
17:51:32 15 more than three months ago, Skyryse offered up its own  
17:51:32 16 proprietary source code that has no reason to believe  
17:51:32 17 contains any Moog source code, more than three months  
17:53:18 18 ago. You want to know how urgent this is to Plaintiff,  
17:53:18 19 ask them if they actually took us up on the inspection.  
17:53:18 20 They refused. We said, look, just agree to our security  
17:53:25 21 restrictions provisionally, you're not waiving your  
17:53:28 22 right have this fight we're having right now. But if  
17:53:30 23 you want to look at them, go ahead and take a look at  
17:53:32 24 them and just agree to the security provisions. They  
17:53:35 25 don't want to look at them on a stand alone secure

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17:53:38 2 computer unless they get the ability to do side by side  
17:53:41 3 comparisons on their own. And this, I appreciate how  
17:53:44 4 transparent Moog has been, they said in the briefs and  
17:53:46 5 said to you today that we want the ability on a single  
17:53:49 6 machine to take our own Moog code base and run other  
17:53:53 7 comparisons to the Skyryse code base before we even  
17:53:56 8 identify our trade secrets. And, your Honor, you've  
17:53:59 9 heard me express my concerns over a number of hearings,  
17:54:04 10 the creation of hindsight creation of trade secrets, but  
17:54:09 11 I think this is telling, and it would be a mistake to  
17:54:11 12 permit this type of discovery so that the Plaintiff can  
17:54:15 13 run these automated side-by-side comparisons, and have  
17:54:18 14 the benefits of where the overlap is before they've even  
17:54:22 15 gone through the burden or gone through the task of  
17:54:24 16 identifying their own trade secrets. It highly  
17:54:29 17 incentivizes a Plaintiff to do what Judge (inadible) has  
17:54:32 18 described, and this is the *Khatabi* case we cited, about  
17:54:36 19 using discovery to redefine the trade secrets to  
17:54:39 20 coincide with the Defendant's.

17:54:42 21 MAGISTRATE JUDGE McCARTHY: Mr. Gross, I  
17:54:44 22 understand that concern, and I addressed it in my July  
17:54:48 23 Decision and Order, and, believe me, I'm sensitive to  
17:54:53 24 it. But, on the other hand, if I understand your  
17:54:57 25 proposed protocol correctly, you would be willing to

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17:55:01 2 allow them to make that comparison, but they've got to  
17:55:04 3 do it by bringing in paper copies and then looking at  
17:55:08 4 your source code on the computer. It would just be much  
17:55:12 5 more difficult for them to do that. But, you are  
17:55:15 6 willing to allow them to make that comparison. Isn't  
17:55:18 7 that right or --

17:55:19 8 MR. GROSS: Well, your Honor, we're willing  
17:55:21 9 to give them a fair inspection of the source code. If  
17:55:24 10 that is the way they want to proceed with it, we won't  
17:55:26 11 stop them from doing that. But they can come and  
17:55:29 12 inspect it, which they've refused to do.

17:55:32 13 MAGISTRATE JUDGE McCARTHY: But we're  
17:55:34 14 talking about huge volumes. I don't know if in  
17:55:37 15 terabytes or what, we're talking about huge volumes of  
17:55:40 16 information, correct?

17:55:41 17 MR. GROSS: I agree, your Honor. There  
17:55:42 18 could be potentially many, many lines of code, and its  
17:55:46 19 incumbent on the Plaintiff to know what in there is its  
17:55:49 20 own trade secret, not to go and find comparisons and  
17:55:52 21 look the comparisons. I don't mean to harp on the  
17:55:55 22 issue, your Honor because, I know your inclination on  
17:55:57 23 this and I respect the ruling you've already made about  
17:56:00 24 about the sequence of discovery, but in the context of  
17:56:03 25 comparing source code, I think it's important to discuss

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17:56:07 2 this a little further because source code is written in  
17:56:11 3 computer languages that have certain conventions by  
17:56:14 4 software engineers who do some things the same way.  
17:56:18 5 There will be similarities. There is no doubt there  
17:56:21 6 will be similarities between any two code bases written  
17:56:25 7 in similar languages. So, those similarities are going  
17:56:28 8 to be there. And it's not appropriate for a Plaintiff  
17:56:31 9 to identify its own trade secrets by looking for those  
17:56:35 10 similarities.

17:56:36 11 MAGISTRATE JUDGE MCCARTHY: But, all right.

17:56:38 12 I mean, I presume, you know, that Moog is as familiar  
17:56:43 13 with those concerns as you are, and they are not going  
17:56:49 14 to try and make it -- I wouldn't think it would be very  
17:56:52 15 productive to make an argument that a comparison,  
17:56:57 16 unlike, you know, a 40,000 foot level is their trade  
17:57:02 17 secret. It would have to be very significantly similar.  
17:57:06 18 And so, you know, your concern, if I understand, I do  
17:57:13 19 understand that, is I think you don't want them  
17:57:18 20 creating, because I'm not requiring them to identify  
17:57:20 21 their trade secrets right now, you don't want them  
17:57:24 22 creating claims of miss appropriated trade secrets based  
17:57:28 23 on what they see in your source code for the first time.  
17:57:31 24 Is that right?

17:57:32 25 MR. GROSS: That is a concern, your Honor.

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17:57:34 2 MAGISTRATE JUDGE MCCARTHY: And, you know, I  
17:57:36 3 understand, and I respect that concern. But, on the  
17:57:39 4 other hand, just because of the volume of information  
17:57:44 5 that we're dealing with in or the need to get through  
17:57:48 6 it, it seems to me there ought to be some type of  
17:57:55 7 computerized comparison allowed, otherwise it's going to  
17:57:58 8 take forever.

17:57:59 9 MR. GROSS: Well, ours does facilitate.  
17:58:01 10 Your Honor, this idea that it's a manual comparison,  
17:58:04 11 it's a little bit of a misnomer. The computers we've  
17:58:07 12 provided on which the source code has been available is  
17:58:12 13 a fully functioning computer, it's not connected to the  
17:58:15 14 internet, and there are some restrictions on it. But  
17:58:17 15 they are allowed, and Mr. Banks may jump in here if I  
17:58:21 16 get any of this wrong, they are allowed to meet and  
17:58:24 17 confer with us about the software tools to put on that  
17:58:28 18 computer that will facilitate an electronic review of  
17:58:31 19 the source code. It's not as though it is on paper and  
17:58:35 20 they are literally are manually flipping through it.  
17:58:37 21 They will have the ability to run electron searches, to  
17:58:40 22 look for key words and put in significant amounts of  
17:58:43 23 search terms and permutations of them to see if it's in  
17:58:46 24 there. And, but, your Honor, I think this source code  
17:58:49 25 dispute spans two particular discovery issues. One is,

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17:58:54 2 what's necessary for them to discover yet to identify  
17:58:57 3 their own trade secrets. Under the stipulated TRO, they  
17:59:02 4 already have in the iDS protocol any source code that  
17:59:06 5 Skyryse concluded even arguably might contain  
17:59:09 6 information that could have come from both parties. So  
17:59:12 7 do they need this additional source code protocol to  
17:59:17 8 investigate Skyryse's source code that is not in that  
17:59:20 9 category, but is just Skyryse's proprietary source code?  
17:59:24 10 No. They have what they need through the iDS protocol  
17:59:28 11 already. But this protocol that Skyryse now has moved  
17:59:31 12 for and proposed will govern, and this is the second  
17:59:33 13 part of the point, will govern discovery going forward.  
17:59:36 14 And it protects both sides. Both sides would benefit,  
17:59:40 15 both sides would have the security of their own source  
17:59:43 16 code being kept in the custody of their own lawyers and  
17:59:47 17 made available to the other side to review. Now, your  
17:59:50 18 Honor, I wanted to close with the point I mentioned  
17:59:52 19 earlier about a new -- a new item that has come up since  
17:59:56 20 the briefing went in, and I think it just underscores  
18:00:00 21 why the iDS protocol, which we know was drafted for the  
18:00:05 22 point of dealing with mixed information, which isn't  
18:00:06 23 appropriate for the other side's source code, where it's  
18:00:10 24 one side or the other own propriety information. In  
18:00:13 25 recent days and weeks, as we're working on discovery

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18:00:17 2 with our colleagues Shepphard Mullin, they made requests  
18:00:21 3 for the production by Skyryse of certain information  
18:00:24 4 that they requested through the iDS platform, and we  
18:00:28 5 have responded to those as they have come in. Recently  
18:00:31 6 Moog has taken the position that Skyryse is not only  
18:00:35 7 required to produce documents on request as images with  
18:00:41 8 Bates number and appropriate confidentiality labels as  
18:00:44 9 they requested before, but they now have taken the iDS  
18:00:49 10 protocol that they say they want to apply to source  
18:00:53 11 code, they are taking a position that the iDS protocol  
18:00:58 12 requires Skyryse to produce, at their request, native  
18:01:02 13 files that they reviewed through the iDS protocol. If  
18:01:07 14 that were to apply to source code, then it would force  
18:01:11 15 Skyryse to take its most proprietary sensitive source  
18:01:17 16 code, and on Moog's request, turn it over to in their  
18:01:49 17 native format to Moog's counsel. That would defeat the  
18:01:53 18 purpose of any security restrictions in the protocols.  
18:01:56 19 I don't mean to be implying any sort of nefarious intent  
18:02:00 20 on Moog or its counsel, but it just demonstrates why  
18:02:04 21 it's not the right vehicle. The iDS protocol is not the  
18:02:07 22 right vehicle for source code discovery. And when, we  
18:02:11 23 will get through our disputes of whether it requires  
18:02:14 24 even native format productions, if we disagree with, but  
18:08:03 25 that the position Moog has taken, and I think we need to

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18:08:07 2 keep that in mind. And I think it's the wrong order to  
18:08:10 3 deal with discovery source code, which many courts have  
18:08:13 4 done in the way Skyryse has proposed with great success  
18:08:16 5 over the years.

18:08:17 6 MAGISTRATE JUDGE McCARTHY: Well --

18:08:18 7 MS. YIP: May I respond?

18:08:19 8 MAGISTRATE JUDGE McCARTHY: Yeah, I'll give  
18:08:20 9 you a minute. But the new issue, obviously, is  
18:08:26 10 something I'm not prepared to deal with today, but we  
18:08:29 11 will deal with it at our next session.

18:08:31 12 Go ahead, Ms. Yip.

18:09:10 13 And before you do, let me ask a question  
18:09:11 14 that has come up based on what Mr. Gross has said. Why,  
18:09:15 15 I mean, if you already have under the existing protocol,  
18:09:19 16 the ability to get access to anything that contains both  
18:09:26 17 Moog and Skyryse source code, so that would seem to me  
18:09:34 18 to be the best evidence of potential misappropriation,  
18:09:37 19 why do you need access to their source code beyond that?

18:09:41 20 MS. YIP: The reason is because we just  
18:09:43 21 cannot take Skyryse's word for it. Basically, Skyryse  
18:09:46 22 is taking the position that we should trust them to have  
18:09:50 23 turned over everything that contains our data that is  
18:09:52 24 incorporated, that has incorporated our data, that was  
18:09:56 25 created using our data, and we have very, very strong

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18:09:59 2 reason to believe that what they have turned over is  
18:10:02 3 incomplete based on what we've seen in our own data  
18:10:06 4 based on what we've seen in the inspection environment.  
18:10:09 5 Frankly, it's very, very hard for us to trust what  
18:10:12 6 Skyryse is saying about what they have turned over. And  
18:10:16 7 I think it's an understandable position for Moog to  
18:10:18 8 take, given the events and the misconduct and the theft  
18:10:21 9 that has brought us all here today. For Skyryse to say,  
18:10:25 10 you don't need to look at our source code or whatever  
18:10:28 11 the set of source code is that they've withheld because  
18:10:31 12 it doesn't contain your data, we shouldn't have to rely  
18:10:34 13 on that. We should be able to conduct our own  
18:10:37 14 inspection to make that call for ourselves rather than  
18:10:41 15 rely on a party that has indisputably taken data from  
18:10:48 16 us, rely on them to be able to make an accurate  
18:10:51 17 representation to us. We should be entitled to make  
18:10:54 18 that call for ourselves and that is what the discovery  
18:10:56 19 process is all about.

18:10:58 20 MR. GROSS: Your Honor, I'll close with the  
18:11:00 21 fact that we offered it three months ago. We're not  
18:11:04 22 hiding something. It is not that they don't trust us  
18:11:07 23 and they don't get the discovery. We've made this  
18:11:11 24 available for three months, they chose not to look at  
18:11:14 25 it.

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18:11:14 2 MS. YIP: May I address that?

18:11:16 3 MR. GROSS: Yes.

18:11:17 4 MS. YIP: The reason it doesn't make sense  
18:11:19 5 to travel to their offices and into an inspection room  
18:11:22 6 and do the inspection under their regime is we would  
18:11:26 7 have a hand tied behind our back. We would have a piece  
18:11:30 8 of paper or thousands of pieces of paper on one hand,  
18:11:33 9 and, on the other hand, a stand-alone computer, yes, it  
18:11:37 10 may have tools, but the tools are of very limited value  
18:11:40 11 if we can't run them against two sets of source code at  
18:11:44 12 once. Maybe a system like that might be okay if 10  
18:11:48 13 source code files were taken, five files were taken from  
18:11:51 14 Moog, but here we have over 40,000 source code files  
18:11:56 15 that were taken, and, approximately, 1.4 million files,  
18:11:59 16 as, you know, your Honor, and maybe more, we don't know.  
18:12:02 17 That is what we know now. In a case like this, it  
18:12:05 18 doesn't make sense for us to bring say 40,000 files,  
18:12:10 19 however many pages, that corresponds to into a physical  
18:12:13 20 inspection room and then be limited to be doing this  
18:12:17 21 visual comparison. There is no tool that can enable you  
18:12:20 22 to run a comparison between two sets of source code when  
18:12:23 23 one set of source code is not even on the computer or  
18:12:26 24 it's somewhere else, whether in a printed copy, printed  
18:12:30 25 form or something else. And these cases that Mr. Gross

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18:12:33 2 has been talking about that he says support his point of  
18:12:37 3 view, they really don't advance the discussion here.  
18:12:39 4 Those cases are completely different from this case.  
18:12:42 5 Those cases did not involve a situation where an  
18:12:45 6 inspection protocol was already in place for over five  
18:12:48 7 months that expressly governs source code. The Court's  
18:12:53 8 inspection protocol specifically says it governs source  
18:12:56 9 code. And when Mr. Gross says the inspection protocol  
18:12:59 10 was drafted to address only mixed code, I know that is  
18:13:04 11 not true because I drafted it. I was the part of the  
18:13:08 12 group of people who drafted it. And so, in conference  
18:13:12 13 with the other -- with Skyryse's former counsel. So,  
18:13:16 14 for him to say it was drafted with this intent, is just  
18:13:20 15 false. And, in fact, Mr. Gross wasn't involved in the  
18:13:22 16 drafting of that inspection protocol. He was  
18:13:25 17 substituted in as counsel afterwards. And so, this  
18:13:29 18 case, this is not a case like those cases that he has  
18:13:32 19 been referencing. Those cases did not involve a  
18:13:34 20 situation where the parties have already reviewed and  
18:13:38 21 produced significant amounts of source code under such a  
18:13:40 22 preexisting inspection protocol. And none of the cases  
18:13:43 23 were the parties already paying for the services of a  
18:13:46 24 third-party neutral vendor to host materials like source  
18:14:26 25 code. Our neutral vendor iDS has been doing a fine job.

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18:14:30 2 And there has not been a single security breach in the  
18:14:34 3 last five months. And, again, perhaps most importantly,  
18:14:37 4 none of those cases involve the scale of the theft that  
18:14:39 5 we've seen here. None of them involve theft of  
18:14:42 6 approximately 1.4 million files and over 40,000 source  
18:14:47 7 code files. This case needs a tailored approach, and we  
18:14:50 8 already have one in the inspection protocol the Court  
18:14:52 9 already entered in May. There is no need to reinvent  
18:14:55 10 the wheel or to add a fifth wheel. The Court's  
18:14:59 11 inspection protocol is appropriate for inspecting all  
18:15:02 12 source code in this case.

18:15:03 13 MAGISTRATE JUDGE MCCARTHY: All right.  
18:15:04 14 Counsel. This has been helpful to me. We've been at  
18:15:08 15 this two hours now. And I'm going to have to draw to a  
18:15:13 16 close for today's purpose. But I want you to continue,  
18:15:16 17 as you are, discussing the other issues. I want you to  
18:15:21 18 continue discussions on this issue, too, bearing in mind  
18:15:27 19 that, as I sit here today, my primary concerns are,  
18:15:32 20 first of all, on Moog's behalf or from Moog's  
18:15:37 21 standpoint, it does seem to me that, given the volume of  
18:15:41 22 files or whatever and source code here, it's -- there  
18:15:46 23 has to be some type of provision for side by side  
18:15:51 24 comparison on a computer or comparison by computer  
18:15:57 25 rather than comparing hard copy or from one computer to

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18:16:03 2 the other where they can't both be looking at the same  
18:16:08 3 universe. I don't know a whole lot about computers, but  
18:16:11 4 it does seem to me it's just not practical to do that  
18:16:16 5 type of a comparison unless you can do it by computer.  
18:16:46 6 So, that leans towards Moog's position. Leaning though  
18:16:50 7 towards Skyryse's position, I am concerned with the  
18:16:55 8 possibility of -- I won't say I'm concerned, I recognize  
18:17:01 9 their concerns about the security of their information  
18:17:05 10 and preventing the possibility of just generating claims  
18:17:12 11 of trade secret misappropriation based on what Moog sees  
18:17:18 12 in the computerized comparison. I do think, though,  
18:17:22 13 that there are provisions which can protect against  
18:17:27 14 that, and certainly the Court would not be pleasantly  
18:17:33 15 disposed to any type of or creation of claims that don't  
18:17:41 16 have a basis in fact. And I think you're all good  
18:17:44 17 attorneys, you're all honest attorneys, and I'm sure you  
18:17:47 18 would do your best not to allow that to occur. I'm not  
18:17:50 19 deciding this issue today. I'm just giving you what my  
18:17:55 20 current concerns are. And I want you to continue  
18:17:59 21 talking and then come back to me.

18:18:01 22 What do you want to do, folks, two weeks,  
18:18:04 23 three weeks, you tell me.

18:18:06 24 MS. ANDOH: Your Honor, I would suggest, so,  
18:18:08 25 a couple of housekeeping issues that I was planning on

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18:18:10 2 raising anyway at the close of this that might impact  
18:18:13 3 the timing of this.

18:18:14 4 MAGISTRATE JUDGE MCCARTHY: Okay.

18:18:15 5 MS. ANDOH: There are a couple of other  
18:18:17 6 issues that have come up that -- that we think are  
18:18:21 7 actually going to require your intervention that are, to  
18:18:24 8 some degree, related. For example, one of them, Mr.  
18:18:26 9 Gross mentioned, that what is the issue of the format of  
18:18:30 10 the production because that is pretty mission critical  
18:18:33 11 for us at this point. There also has been a series of  
18:18:38 12 concerns that have been raised with interpretation of  
18:20:38 13 your Honor's prior orders with respect to the third  
18:20:40 14 party discovery relevant to our trade secret I.D.

18:20:45 15 MAGISTRATE JUDGE MCCARTHY: Relevant to  
18:20:46 16 what?

18:20:47 17 MS. ANDOH: Our trade secret identification  
18:20:49 18 process.

18:20:49 19 MAGISTRATE JUDGE MCCARTHY: Okay.

18:20:50 20 MS. ANDOH: So, I think those two issues  
18:20:52 21 we're going to have to move on. And so what I would  
18:20:54 22 suggest is that you do the next hearing -- your Honor,  
18:21:00 23 the reason I'm hedging a little bit here, I'm actually  
18:21:03 24 on jury trial the week of November 14th, but I also  
18:21:06 25 don't want to be let this go away on this. I would

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18:21:12 2 suggest, I would suggest probably the best move here,  
18:21:17 3 your Honor, would be to have the hearing in three weeks.  
18:21:20 4 I'm going to hope that if you do it on the Friday, the  
18:21:22 5 18th, I'll be done with my trial by then. And if not,  
18:21:25 6 I'll support my colleagues in moving forward without me.  
18:21:30 7 But the reason why I think there needs to be three weeks  
18:21:33 8 is because I think there needs to be time for us to file  
18:21:36 9 additional motions and have them fully consider  
18:21:41 10 submitted for consideration. And I think with respect  
18:21:42 11 to the materials that your Honor has suggested that we  
18:21:51 12 need to meet and confer with opposing counsel, we  
18:21:54 13 probably should be in a position to do a joint  
18:21:58 14 stipulation, not joint submission, logically that is  
18:22:05 15 really tough, but simultaneous submission to your Honor,  
18:22:09 16 maybe like 72 hours ahead of the next hearing that  
18:22:12 17 basically briefs your Honor on progress and identifies  
18:22:15 18 issues that have been resolved, and also summarizes the  
18:22:19 19 remaining outstanding issues that the parties believe  
18:22:22 20 the Court needs to decide. I think one thing that is  
18:22:25 21 happening, as time goes by, these issues -- these issues  
18:22:29 22 have a tendency to become almost (inaudible) issues,  
18:22:34 23 your Honor. And so I think it's important that when we  
18:22:36 24 actually get to the Court, that your Honor has something  
18:22:39 25 in writing from each of the party's understanding what

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18:22:42 2 they understand the issues to be what the status of the  
18:22:44 3 issue to be. And that way your Honor has a very clear  
18:22:48 4 road map in which to make any decisions going forward.

18:22:50 5 MR. GROSS: Your Honor, if I could respond  
18:22:52 6 to that, please.

18:22:52 7 MAGISTRATE JUDGE MCCARTHY: Yeah.

18:22:53 8 MR. GROSS: We have operated under your  
18:22:57 9 instruction that all discovery, except for what Moog  
18:23:01 10 says it needs to identify its trade secrets, is  
18:23:04 11 sequenced for after that gets resolved. And I'm hearing  
18:23:07 12 now that they want to bring in more motions. We have a  
18:23:10 13 motion to compel that was filed June 30th. We have been  
18:23:15 14 holding off third-party discovery. We need to test  
18:23:15 15 what's going on with Moog's alleged efforts to keep its  
18:23:21 16 trade secret secret, and all of that has been on hold.  
18:23:23 17 So I'm concerned about this asymmetry, and if we're  
18:23:27 18 going to bring more motions. And if that is the case  
18:23:29 19 and there is going to be open season on discovery, then  
18:23:31 20 I am sure we're going to get right to work and we'll  
18:23:33 21 have motions. But I would appreciate the Court's  
18:23:35 22 guidance on exactly what the next hearing is for. If it  
18:23:38 23 is to follow up on issues here and is going to proceed  
18:23:42 24 in order after that, no problem. If you tell us that  
18:23:45 25 discovery can proceed full bore, no problem but we need

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18:23:51 2 some parity here.

18:23:51 3 MS. ANDOH: Your Honor, the issues that we  
18:23:52 4 plan on bringing are issues that need to be resolved for  
18:23:55 5 the trade secret identification. And what you're  
18:23:57 6 hearing right now is exactly what hear on the meet and  
18:23:59 7 confers when we show up and say, we need this  
18:24:03 8 information for our trade secret identification, and the  
18:24:07 9 Defendants say, no, you don't. And this material is  
18:24:08 10 stayed and you don't get it right now. And then we get  
18:24:11 11 gridlocked. So, from our perspective, we are fully  
18:24:16 12 aware of the fact that the only motions you need to hear  
18:24:20 13 right now are ones that relate to our ability to do our  
18:24:20 14 trade secret identification.

18:24:21 15 These additional issues that have arisen, in  
18:24:24 16 our view, which I believe the Court is going to share  
18:24:29 17 once it is fully submitted, is that they are necessary  
18:24:30 18 for us to engage in our trade secret I.D. Very clearly  
18:24:31 19 from the shaking of the heads of the Skyryse attorneys,  
18:24:32 20 they disagree with us and they'll make that position on  
18:24:35 21 paper, but we need to get guidance from your Honor in  
18:24:38 22 order to proceed.

18:24:39 23 MAGISTRATE JUDGE MCCARTHY: Okay. If it  
18:24:42 24 will help the parties, I will reiterate my understanding  
18:24:46 25 of how we're going. And that is, we're not -- I'm

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2 tabling everything except the discovery that is  
3 necessary for Moog to identify its trade secrets with  
4 the level of specificity that I talked about in my July  
5 Decision and Order. Other issues such as discovery into  
6 whether or not something identified as a trade secret  
7 that has been misappropriated was in fact a trade  
8 secret, such as what measures did you take, did Moog  
9 take to preserve it, preserve confidentiality, et  
10 cetera, et cetera, those are for down the road. So,  
11 that is what I envision happening in terms of the  
12 sequencing here.

18:25:35 13 Now, if Moog truly needs third-party  
18:25:40 14 discovery in order to identify the trade secrets, that  
18:25:46 15 which of its trade secrets have been misappropriated,  
18:25:51 16 then conceptually that wouldn't bother me. I haven't  
18:25:54 17 seen the details of anything along those lines. But, I  
18:25:58 18 did not mean to cabin your ability to do discovery on  
18:26:05 19 that issue only to discovery from each other. But,  
18:26:09 20 again, it's only discovery necessary to enable Moog to  
18:26:14 21 identify the trade secrets that it claims to have been  
18:26:17 22 misappropriated. Because, again, folks, remember, we're  
18:26:20 23 just dealing right now with discovery that is necessary  
18:26:24 24 for the preliminary injunction hearing. Other discovery  
18:26:29 25 will take place at a later date, either in this court or

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18:26:33 2 in California.

18:26:35 3 MR. GROSS: Understood. Your Honor, if,  
18:26:37 4 just for clarity, please.

18:26:40 5 MAGISTRATE JUDGE MCCARTHY: Yeah.

18:26:40 6 MR. GROSS: You ordered the Plaintiff on  
18:26:43 7 July 27th to file its motion to compel this discovery  
18:26:46 8 allegedly necessary to enable itself to identify trade  
18:26:50 9 secrets. We didn't raise third party discovery issues  
18:26:53 10 then. We're asking if you are giving them leave to file  
18:26:57 11 another motion to compel discovery.

18:26:59 12 MAGISTRATE JUDGE MCCARTHY: They were moving  
18:27:00 13 to compel discovery from you or from the individual  
18:27:03 14 Defendants.

18:27:03 15 MR. GROSS: That was their choice.

18:27:05 16 MAGISTRATE JUDGE MCCARTHY: Pardon?

18:27:05 17 MR. GROSS: That was their choice.

18:27:07 18 MAGISTRATE JUDGE MCCARTHY: Yeah. But I  
18:27:08 19 mean, again, folks, you are telling me that things are  
18:27:11 20 coming up, which I haven't seen any detail about. So,  
18:27:15 21 maybe yes, maybe no. But, I guess what I want to happen  
18:27:19 22 is when we get to the point of identifying trade secrets  
18:27:22 23 at issue, I don't want Moog saying, well, no, we need  
18:27:28 24 more discovery to tell you more trade secrets. We have  
18:27:31 25 to have kind of a drop dead date. And that is what

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18:27:34 2 we're going to deal with for purposes of the preliminary  
18:27:37 3 injunction motion. Down the road, if discovery leads in  
18:27:40 4 other directions for the balance of remainder of the  
18:27:43 5 case, then so be it. But, so that is how I see things  
18:27:50 6 now. Again, you're throwing a lot at me that I have not  
18:27:54 7 heard about before, and I'll deal with it at the  
18:27:56 8 appropriate time. And, in terms of what the time frame  
18:28:01 9 will be, I'm fine with three weeks from now. I'm not so  
18:28:05 10 fine with only getting your letters two days in advance,  
18:28:11 11 because that doesn't really give me enough time to, you  
18:28:17 12 know, meaningfully react to things. I'm a slow study.

18:28:22 13 So, I would suggest, if you want to put it  
18:28:24 14 more than three weeks, but I want your letters, I would  
18:28:27 15 think, at least four days before the hearing.

18:28:36 16 MS. ANDOH: That is fine, your Honor. And  
18:28:39 17 some -- I mean, the other thing we could consider doing,  
18:28:42 18 your Honor, because there is a lot going on here, we  
18:28:45 19 could decide to schedule two separate hearings, although  
18:28:48 20 I know your Honor was sort of probably secretly happy  
18:28:51 21 not to see us for the last couple of months.

18:28:53 22 MAGISTRATE JUDGE McCARTHY: No, no,  
18:28:54 23 seriously I missed you people. I was so happy to see  
18:28:57 24 you all again. And I'm very disappointed that I don't  
18:29:00 25 usually have my Hollywood Squares. Where is everybody

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18:29:04 2 else? Tell them I'm disappointed they are not here.

18:29:07 3 MS. ANDOH: Your Honor, one thing we could  
18:29:08 4 do, we could do a hearing on these issues on November  
18:29:11 5 10th, and then we could set a second hearing to deal  
18:29:15 6 with the new motion practice. Essentially, your Honor,  
18:29:18 7 because it seems to me it took two hours to get through  
18:29:21 8 this round, it might be a lot to ask that one hearing  
18:29:24 9 could cover everything. Having said that, your Honor,  
18:29:28 10 I'm very eager to try and put a bookend on this,  
18:29:32 11 contrary to some insinuations that might have been made.  
18:29:37 12 We are really trying to move this case forward  
18:29:39 13 incredibly hard.

18:29:41 14 MAGISTRATE JUDGE MCCARTHY: I know you are.  
18:29:42 15 Believe me, folks, your disputes, I haven't thus far, at  
18:29:47 16 least, seen somebody that impresses me as really just  
18:29:50 17 trying to play fast and loose. I think you're all  
18:29:53 18 working in good faith. And that is what makes it hard  
18:29:57 19 because it's easy if I can see somebody that is just,  
18:30:01 20 you know, I can say in a minute, no, your argument is  
18:30:04 21 crazy. Nobody has advanced crazy arguments to me thus  
18:30:09 22 far. So, I know you're all trying your best.

18:30:13 23 But, Rena, I think I do agree that there is  
18:30:17 24 a limit to what I can process at any one time. So maybe  
18:30:21 25 our next meeting should be addressed to the progress

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18:30:27 2 that you've made in your meet and confer on what we  
18:30:30 3 discussed today. And then I'll decide what I have to  
18:30:33 4 decide and then we can turn to the next issues. Does  
18:30:37 5 that make sense?

18:30:41 6 MR. GREEN: Yes, your Honor. Could I make a  
18:30:43 7 suggestion, though, just because, you know, I don't feel  
18:30:47 8 that the motion that was directed against us actually  
18:30:51 9 had to do with us identifying trade secrets. And since  
18:31:14 10 we don't what other motions Moog is planning on filing,  
18:31:19 11 could we table other motions being filed or at least  
18:31:25 12 discuss that at the next conference as to whether you  
18:31:29 13 believe that actually has to do with the identification  
18:31:33 14 with trade secrets so that there is a lack of parity  
18:31:39 15 that Mr. Gross mentioned, which is true.

18:31:42 16 MS. ANDOH: Your Honor, we'll make the case  
18:31:43 17 in our motion that it directly relates to the trade  
18:31:46 18 secret I.D. If your Honor disagrees, he'll deny or  
18:32:47 19 suspend it until the trade secret I.D. is over. But  
18:32:51 20 what Mr. Green is essentially suggesting is that the  
18:32:54 21 Court is going to act as an gatekeeper without the full  
18:32:58 22 information on what the basis for our motions actually  
18:33:40 23 are. And that, your Honor, we would strongly oppose.

18:33:42 24 MAGISTRATE JUDGE McCARTHY: All right.  
18:33:43 25 Okay.

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18:33:43 2 MR. GROSS: Your Honor, I'm sorry, I need  
18:33:45 3 some clarification. Who has leave to file motions right  
18:33:48 4 now, because the Defendants have a bunch of discovery  
18:33:51 5 that bears on the PI hearing that we would like to get  
18:33:56 6 going. And it sounds like the Plaintiff has the  
18:33:59 7 opportunity to file motions right now.

18:34:01 8 MAGISTRATE JUDGE MCCARTHY: No, I didn't say  
18:34:02 9 -- maybe I'm confused. I would like, by the time of our  
18:34:07 10 -- I would like to draw the curtain on on the issues we  
18:34:17 11 have been talking about today and get them decided, and  
18:34:19 12 I commit to do them at our next proceeding, hopefully,  
18:34:24 13 with your assistance, through your meet and confer,  
18:34:27 14 having narrowed the issues even further. Let's get  
18:34:30 15 these taken care of and then let's take up what comes  
18:34:33 16 next. If you want to do that in two weeks rather than  
18:34:37 17 three weeks, whatever, that is fine. But, again, I'm  
18:34:40 18 trying to proceed in some orderly fashion here.

18:34:44 19 But, so, let's just set a date to wrap up  
18:34:47 20 these issues, let's hold off on other things until we  
18:34:51 21 get these issues wrapped up.

18:34:53 22 MS. ANDOH: Your Honor, if I may, I don't  
18:34:55 23 think there is actually confusion here. Your Honor was  
18:34:58 24 crystal clear that the only issues that were supposed to  
18:35:00 25 be moved forward in discovery right now are ones related

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18:35:30 2 to our ability to identify our trade secrets that have  
18:35:34 3 been misappropriated for purposes of the preliminary  
18:35:36 4 injunction. If we require further motion practice in  
18:35:39 5 order to be able to obtain the information we need in  
18:35:42 6 order to push that trade secret I.D. process forward,  
18:35:44 7 our understanding is, based on your Honor's guidance as  
18:35:48 8 well as the order, is we're permitted to make them. I  
18:35:50 9 would suggest, your Honor, that we go ahead and make the  
18:35:53 10 motions, because we need to be in a briefing schedule,  
18:35:55 11 and then we need to have a hearing on them. And, so, if  
18:35:58 12 we don't proceed with doing that, and then we have  
18:36:01 13 another discussion at the next hearing in two weeks  
18:36:04 14 about what the motions would be, it's going to be after  
18:36:07 15 Christmas b y the time those motions are resolved. As  
18:36:11 16 an Officer the Court, I'm making a representation to  
18:36:13 17 your Honor, we have a good faith belief that the  
18:36:15 18 outstanding issue that we have that we're going to move  
18:36:18 19 on, are directly related to our ability to complete the  
18:36:21 20 task that your Honor ordered us to complete in the trade  
18:36:25 21 secret identification order. We will not make those  
18:36:28 22 motions if that is not the case. And to the extent that  
18:36:31 23 the Defendants believe they also have motions that are  
18:36:33 24 relevant to those proceeding, your Honor, if they are  
18:36:36 25 motions for protective order, for example, then my

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18:36:41 2 request that your Honor also tell them they can do that,  
18:36:43 3 too.

18:36:44 4 The foundational issue is, does it relate to  
18:36:47 5 our ability to identify our trade secrets that we are  
18:36:47 6 going to be asserting misappropriation on in the  
18:36:47 7 preliminary injunction, and we believe that the motion  
18:37:28 8 practice that we need to engage in is directly related  
18:37:29 9 to that.

18:37:30 10 MAGISTRATE JUDGE MCCARTHY: Okay, folks. If  
18:37:31 11 you want to make those motions, you can make those  
18:37:34 12 motions. Limited to those issues.

18:37:37 13 We're going to meet in two weeks again,  
18:37:40 14 right, November 10th. Is that what you suggested?  
18:37:42 15 First you suggested November 18th, you're on trial the  
18:37:46 16 week of --

18:37:47 17 MS. ANDOH: The 14th. The 10th is fine,  
18:37:50 18 your Honor.

18:37:50 19 MAGISTRATE JUDGE MCCARTHY: All right. So  
18:37:51 20 let me go back to, so if you want to make the motions in  
18:37:54 21 the interim, go ahead and make them, but I won't set a  
18:37:58 22 briefing schedule on them until we meet on the 10th, and  
18:38:01 23 I'll set a briefing schedule. But what we're going to  
18:38:04 24 talk about on the 10th is resolving the issues that  
18:38:07 25 we've talked about today. Okay?

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18:38:09 2 MS. ANDOH: Understood, your Honor. Yeah,  
18:38:11 3 the 10th is fine. Anything up until the 14th is fine.

18:38:17 4 MAGISTRATE JUDGE MCCARTHY: Okay. When do  
18:38:18 5 you start your trial?

18:38:19 6 MS. ANDOH: Monday the 14th.

18:38:22 7 MAGISTRATE JUDGE MCCARTHY: Okay. Oh, yeah,  
18:38:23 8 the 11th is Veteran's Day, so, yeah, let's do the 10th,  
18:38:30 9 I have something at 2 o'clock, our time. So why don't  
18:38:38 10 we -- why don't we say -- let's do 3 o'clock again.  
18:38:42 11 Does that work for everybody?

18:38:44 12 MR. GROSS: Skyryse can make that work, your  
18:38:46 13 Honor.

18:38:46 14 MS. ANDOH: Plaintiffs can make that work.

18:38:48 15 MR. GREEN: We can make it work. I'm not  
18:38:50 16 sure if I will be here, but at least Mr. Truitt will be  
18:38:54 17 able to be here.

18:38:55 18 MAGISTRATE JUDGE MCCARTHY: Okay. Thank  
18:38:56 19 you. And what, again, what I would like, so that I can  
18:39:02 20 react to it and be able to hit the ground running on the  
18:39:06 21 10th, if you can get me your letters, how about, and get  
18:39:15 22 me your letters by noon on the 8th.

18:39:20 23 MS. ANDOH: Your Honor, is election day a  
18:39:22 24 court holiday?

18:39:25 25 MAGISTRATE JUDGE MCCARTHY: Good question.

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18:39:26 2 MS. ANDOH: I think it is.

18:39:34 3 MAGISTRATE JUDGE MCCARTHY: Yeah, we'll be  
18:39:35 4 here anyway. But I don't know if it is. Is that a  
18:39:39 5 problem for you then, then I can say the 7th. I don't  
18:39:44 6 want to wait until the 9th. That is not realistic for  
18:39:47 7 me. So, I can either say the 7th. How about the 7th at  
18:39:55 8 midnight because that is the way a lot of people operate  
18:39:58 9 anyway.

18:40:02 10 MR. GREEN: That is a fact, that works for  
18:40:06 11 the individuals.

18:40:06 12 MAGISTRATE JUDGE MCCARTHY: I don't want the  
18:40:07 13 California people to take advantage of this midnight,  
18:40:17 14 that is 9 o'clock.

18:40:18 15 MR. GROSS: We understand local time, but,  
18:40:45 16 your Honor, can I just have you repeat the deadline that  
18:40:47 17 you just said that was for submitting what papers?

18:40:50 18 MAGISTRATE JUDGE MCCARTHY: Just an update  
18:40:51 19 on what you have, what progress you've made in the  
18:40:57 20 discussions as a result of today's conference. And  
18:41:00 21 telling me what issues are off the table and what  
18:41:02 22 issues. And, hopefully, some, at least, and what issues  
18:41:07 23 remain in dispute and need to be decided by me on the  
18:41:10 24 10th.

18:41:11 25 MR. GROSS: Okay.

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18:41:11 2 MAGISTRATE JUDGE MCCARTHY: That is what I'm  
18:41:12 3 going to do. If, in the interim, if anybody wants to  
18:41:16 4 make another motion related to Moog's ability to  
18:41:23 5 identify the trade secrets which it claims to have been  
18:41:27 6 misappropriated, you can make those motions, but again,  
18:41:33 7 I mean, Mr. Gross, you do make a good point that Moog  
18:41:37 8 already did make its motions, so there may be reasons  
18:41:42 9 it's got to make additional motions, but I'll just want  
18:41:45 10 to take a look at those, I don't know. You can make  
18:41:47 11 those motions whenever you want, but I'm not going to  
18:41:51 12 set a briefing schedule on them until the 10th. So,  
18:41:54 13 okay?

18:41:54 14 MS. ANDOH: Understood, your Honor. What  
18:41:56 15 we'll try to do is get them on file so your Honor has  
18:41:58 16 sufficient opportunity to review them prior to the  
18:42:02 17 conference. And, your Honor --

18:42:03 18 MAGISTRATE JUDGE MCCARTHY: Again, I will  
18:42:05 19 want to know why this is something that wasn't  
18:42:08 20 encompassed in your docket No. 210 that was supposed to  
18:42:14 21 be your motion.

18:42:16 22 MS. ANDOH: I appreciate the guidance.  
18:42:18 23 We'll make sure to do that.

18:42:19 24 Two very minor housekeeping issues.  
18:42:22 25 MAGISTRATE JUDGE MCCARTHY: Yes.

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18:42:22 2 MS. ANDOH: The first is with respect to the  
18:42:25 3 RRO, with respect to the individual Defendants, the  
18:42:30 4 deadline passed for the RRO to be de-designated and  
18:42:34 5 nobody objected to the de-designation, but I believe  
18:42:42 6 it's still sealed on the docket.

18:42:51 7 MAGISTRATE JUDGE MCCARTHY: I'm sorry, is  
18:42:52 8 this the privilege.

18:42:53 9 MS. ANDOH: Yes, the privileged order. I  
18:42:55 10 believe it's so your Honor set a deadline for any party  
18:42:58 11 to object to it becoming public and the deadline  
18:43:02 12 elapsed, but it hasn't been made public. So, honesty in  
18:43:06 13 advertising, it's a pure housekeeping issue, but I  
18:43:09 14 believe it hasn't been unsealed yet on PACER.

18:43:12 15 MAGISTRATE JUDGE MCCARTHY: Can somebody  
18:43:13 16 point me to the docket number of that or I can find it.  
18:43:20 17 Yeah, it's 253, I believe. Yeah 253. I'm pulling that  
18:43:27 18 up right now. Yeah, it says "filed under seal," so that  
18:43:30 19 is dealing with the dismissal or transfer of venue and  
18:43:34 20 the privilege issue, yeah. Yeah, I think that the  
18:43:44 21 deadline has expired, so what I would do is just, I  
18:43:49 22 guess, re-docket it and take out "sealed," because if I  
18:43:53 23 make it public as is, it looks strange because it says  
18:44:00 24 "filed under seal," and somebody might say, then why am  
18:44:04 25 I looking at it. I would change page one to say

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18:44:08 2 "Report, Recommendation and Order" and delete the "filed  
18:44:10 3 under seal," and I'll re-docket it. Does that make  
18:44:13 4 sense?

18:44:14 5 MS. ANDOH: It does, your Honor.

18:44:16 6 And the only other housekeeping issue is  
18:44:18 7 with respect to the demonstratives that Mr. Gross was  
18:44:21 8 showing earlier today. With respect to having those  
18:44:24 9 made part of the record, I don't think we'll object to  
18:44:28 10 having that. I think the only slides shown were five  
18:44:30 11 through ten of his PowerPoint presentation, so we ask  
18:44:35 12 that the only slides be made part of the record are five  
18:44:39 13 through ten and the remaining slides not be submitted.

18:44:44 14 MR. GROSS: That is, by our count, that is  
18:44:52 15 it.

18:44:53 16 MAGISTRATE JUDGE McCARTHY: You agreed on  
18:44:55 17 something.

18:44:55 18 MS. ANDOH: Miracles of miracles.

18:44:57 19 MAGISTRATE JUDGE McCARTHY: Gabe, if you  
18:44:58 20 want, at the time you file them, you can accompany them  
18:45:02 21 with a little letter, and I was trying to pay attention,  
18:45:05 22 but the significance as you see it. And then Moog, you  
18:45:08 23 can respond if you want, okay? Just by the time --  
18:45:13 24 hopefully, you're all going to be making some progress  
18:45:16 25 with the guidance I've given you.

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18:45:18 2 MR. GROSS: But, your Honor, would it be  
18:45:20 3 helpful to you to have a little bit of a narrative  
18:45:23 4 description of the description in the slides.

18:45:25 5 MAGISTRATE JUDGE MCCARTHY: Yes.

18:45:26 6 MR. GROSS: We'll be happy to put that  
18:45:27 7 together.

18:45:28 8 MS. ANDOH: Your Honor, if that is going to  
18:45:29 9 happen, I ask that he submit that prior to our deadline  
18:45:32 10 to submit and update to your Honor.

18:45:34 11 MAGISTRATE JUDGE MCCARTHY: Yeah. I mean, I  
18:45:35 12 would like to see that, I'd like that by early next  
18:45:39 13 week.

18:45:39 14 MR. GROSS: It's coming soon.

18:45:41 15 MAGISTRATE JUDGE MCCARTHY: All right.  
18:45:43 16 Folks, I'm leaving tomorrow to go out to South Bend to  
18:45:46 17 see my Alma Mater play football, and they disappointed  
18:45:51 18 me this year, but I'll be thinking of you all when I'm  
18:45:56 19 out there.

18:46:06 20 MR. BANKS: I'll be bringing my daughter  
18:46:08 21 back. I might see you there.

18:46:08 22 MAGISTRATE JUDGE MCCARTHY: I'll be looking  
18:46:09 23 for you, Rob, we can talk about the case.

18:46:12 24 MR. GROSS: Thank you, your Honor.

18:46:13 25 MS. ANDOH: Thank you.

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2 \* \* \*

3 CERTIFICATE OF REPORTER

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5 I certify that the foregoing is a correct transcript  
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